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Indians

25

Revised as of April 1, 1997

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AS OF APRIL 1, 1997

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 25 CFR 1.2 *refers to title 25, part 1, section 2.*

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Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

The appropriate revision date is printed on the cover of each volume.

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RAYMOND A. MOSLEY,

Director,

Office of the Federal Register.

April 1, 1997.

THIS TITLE

Title 25—INDIANS is composed of one volume. The contents of this volume represent all current regulations codified under this title of the CFR as of April 1, 1997.

For this volume, Scott D. Andreae was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

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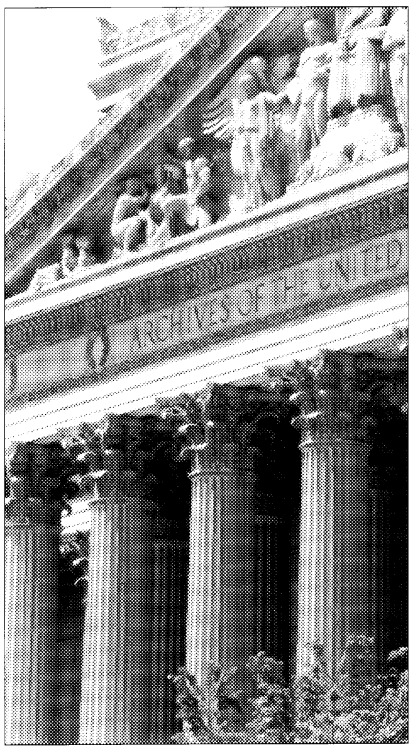

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Cross References: Regulations pertaining to migratory birds, applicable to Indians living on reservations: See Wildlife and Fisheries, 50 CFR chapter I.

Bureau of Land Management regulations pertaining to Indians: See Bureau of Land Management, 43 CFR part 2530.

Public Health regulations pertaining to contracts and health: See Public Health, 42 CFR chapter I.

NOTE: Other regulations issued by the Department of the Interior appear in title 30, chapters II, III, IV, VI, VII; title 36, chapter I; title 41, chapter 114; title 48, chapter 14; title 43; and title 50, chapters I and IV, Code of Federal Regulations.

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PART 1—APPLICABILITY OF RULES OF THE BUREAU OF INDIAN AFFAIRS

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1.1 [Reserved]
1.2 Applicability of regulations and reserved authority of the Secretary of the Interior.
1.3 Scope.
1.4 State and local regulation of the use of Indian property.
1.10 Availability of forms.

AUTHORITY: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2.

§ 1.1 [Reserved]

§ 1.2 Applicability of regulations and reserved authority of the Secretary of the Interior.

The regulations in chapter I of title 25 of the Code of Federal Regulations are of general application. Notwithstanding any limitations contained in the regulations of this chapter, the Secretary retains the power to waive or make exceptions to his regulations as found in chapter I of title 25 CFR in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians.

[25 FR 3124, Apr. 12, 1960]

§ 1.3 Scope.

Chapters I and II of this title contain the bulk of the regulations of the Department of the Interior of general application relating to Indian affairs. Subtitle B, chapter I, title 43 of the Code or Federal Regulations contains rules relating to the relationship of Indians to public lands and townsites. Subtitle A of title 43 CFR has application to certain aspects of Indian affairs and, among other things, contains procedural rules for appellate and other administrative review and for practice before the Department of the Interior, of which the Bureau of Indian Affairs is a part. Indian health matters are covered in 42 CFR part 36. Title 30 CFR contains regulations on oil and gas and other mining operations, which, under certain circumstances, may be applicable to Indian resources.

[25 FR 3124, Apr. 12, 1960, as amended at 40 FR 20625, May 12, 1975; 48 FR 13414, Mar. 31, 1983]

§ 1.4 State and local regulation of the use of Indian property.

(a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

(b) The Secretary of the Interior or his authorized representative may in specific cases or in specific geographic areas adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property. In determining whether, or to what extent, such laws, ordinances, codes, resolutions, rules or other regulations shall be adopted or made applicable, the Secretary or his authorized representative may consult with the Indian owner or owners and may consider the use of, and restrictions or limitations on the use of, other property in the vicinity, and such other factors as he shall deem appropriate.

[30 FR 7520, June 9, 1965]

§ 1.10 Availability of forms.

Forms upon which applications and related documents may be filed and upon which rights and privileges may be granted may be inspected and procured at the Bureau of Indian Affairs, Washington, DC, and at the office of

any Area Director or Agency Superintendent.

[25 FR 3124, Apr. 12, 1960]

PART 2—APPEALS FROM ADMINISTRATIVE ACTIONS

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2.21 Scope of review.

AUTHORITY: R.S. 463, 465; 5 U.S.C. 301, 25 U.S.C. 2, 9.

SOURCE: 54 FR 6480, Feb. 10, 1989, unless otherwise noted.

§ 2.1 Information collection.

In accordance with Office of Management and Budget regulations in 5 CFR 1320.3(c), approval of information collections contained in this regulation is not required.

§ 2.2 Definitions.

Appeal means a written request for review of an action or the inaction of an official of the Bureau of Indian Affairs that is claimed to adversely affect the interested party making the request.

Appellant means any interested party who files an appeal under this part.

Interested party means any person whose interests could be adversely affected by a decision in an appeal.

Legal holiday means a Federal holiday as designated by the President or the Congress of the United States.

Notice of appeal means the written document sent to the official designated in this part, indicating that a decision is being appealed (see § 2.9).

Person includes any Indian or non-Indian individual, corporation, tribe or other organization.

Statement of reasons means a written document submitted by the appellant explaining why the decision being appealed is in error (see § 2.10).

[54 FR 6480, Feb. 10, 1989; 54 FR 7666, Feb. 22, 1989]

§ 2.3 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to all appeals from decisions made by officials of the Bureau of Indian Affairs by persons who may be adversely affected by such decisions.

(b) This part does not apply if any other regulation or Federal statute provides a different administrative appeal procedure applicable to a specific type of decision.

§ 2.4 Officials who may decide appeals.

The following officials may decide appeals:

(a) An Area Director, if the subject of appeal is a decision by a person under the authority of that Area Director.

(b) An Area Education Programs Administrator, Agency Superintendent for Education, President of a Post-Secondary School, or the Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs), if the appeal is from a decision by an Office of Indian Education Programs (OIEP) official under his/her jurisdiction.

(c) The Assistant Secretary—Indian Affairs pursuant to the provisions of § 2.20 of this part.

(d) A Deputy to the Assistant Secretary—Indian Affairs pursuant to the provisions of § 2.20(c) of this part.

(e) The Interior Board of Indian Appeals, pursuant to the provisions of 43 CFR part 4, subpart D, if the appeal is from a decision made by an Area Director or a Deputy to the Assistant Secretary—Indian Affairs other than the Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs).

§2.5 Appeal bond.

(a) If a person believes that he/she may suffer a measurable and substantial financial loss as a direct result of the delay caused by an appeal, that person may request that the official before whom the appeal is pending require the posting of a reasonable bond by the appellant adequate to protect against that financial loss.

(b) A person requesting that a bond be posted bears the burden of proving the likelihood that he/she may suffer a measurable and substantial financial loss as a direct result of the delay caused by the appeal.

(c) In those cases in which the official before whom an appeal is pending determines that a bond is necessary to protect the financial interests of an Indian or Indian tribe, that official may require the posting of a bond on his/her own initiative.

(d) Where the official before whom an appeal is pending requires a bond to be posted or denies a request that a bond be posted, he/she shall give notice of his/her decision pursuant to §2.7.

§2.6 Finality of decisions.

(a) No decision, which at the time of its rendition is subject to appeal to a superior authority in the Department, shall be considered final so as to constitute Departmental action subject to judicial review under 5 U.S.C. 704, unless when an appeal is filed, the official to whom the appeal is made determines that public safety, protection of trust resources, or other public exigency requires that the decision be made effective immediately.

(b) Decisions made by officials of the Bureau of Indian Affairs shall be effective when the time for filing a notice of appeal has expired and no notice of appeal has been filed.

(c) Decisions made by the Assistant Secretary—Indian Affairs shall be final for the Department and effective immediately unless the Assistant Secretary—Indian Affairs provides otherwise in the decision.

[54 FR 6480, Feb. 10, 1989; 54 FR 7666, Feb. 22, 1989]

§2.7 Notice of administrative decision or action.

(a) The official making a decision shall give all interested parties known to the decisionmaker written notice of the decision by personal delivery or mail.

(b) Failure to give such notice shall not affect the validity of the decision or action but the time to file a notice of appeal regarding such a decision shall not begin to run until notice has been given in accordance with paragraph (c) of this section.

(c) All written decisions, except decisions which are final for the Department pursuant to §2.6(c), shall include a statement that the decision may be appealed pursuant to this part, identify the official to whom it may be appealed and indicate the appeal procedures, including the 30-day time limit for filing a notice of appeal.

[54 FR 6480, Feb. 10, 1989; 54 FR 7666, Feb. 22, 1989]

§2.8 Appeal from inaction of official.

(a) A person or persons whose interests are adversely affected, or whose ability to protect such interests is impeded by the failure of an official to act on a request to the official, can make the official's inaction the subject of appeal, as follows:

(1) Request in writing that the official take the action originally asked of him/her;

(2) Describe the interest adversely affected by the official's inaction, including a description of the loss, impairment or impediment of such interest caused by the official's inaction;

(3) State that, unless the official involved either takes action on the merits of the written request within 10 days of receipt of such request by the official, or establishes a date by which action will be taken, an appeal shall be filed in accordance with this part.

(b) The official receiving a request as specified in paragraph (a) of this section must either make a decision on the merits of the initial request within 10 days from receipt of the request for a decision or establish a reasonable later date by which the decision shall be made, not to exceed 60 days from the

date of request. If an official establishes a date by which a requested decision shall be made, this date shall be the date by which failure to make a decision shall be appealable under this part. If the official, within the 10-day period specified in paragraph (a) of this section, neither makes a decision on the merits of the initial request nor establishes a later date by which a decision shall be made, the official's inaction shall be appealable to the next official in the process established in this part.

[54 FR 6480, Feb. 10, 1989; 54 FR 7666, Feb. 22, 1989]

§ 2.9 Notice of an appeal.

(a) An appellant must file a written notice of appeal in the office of the official whose decision is being appealed. The appellant must also send a copy of the notice of appeal to the official who will decide the appeal and to all known interested parties. The notice of appeal must be filed in the office of the official whose decision is being appealed within 30 days of receipt by the appellant of the notice of administrative action described in § 2.7. A notice of appeal that is filed by mail is considered filed on the date that it is postmarked. The burden of proof of timely filing is on the appellant. No extension of time shall be granted for filing a notice of appeal. Notices of appeal not filed in the specified time shall not be considered, and the decision involved shall be considered final for the Department and effective in accordance with § 2.6(b).

(b) When the appellant is an Indian or Indian tribe not represented by counsel, the official who issued the decision appealed shall, upon request of the appellant, render such assistance as is appropriate in the preparation of the appeal.

(c) The notice of appeal shall:

(1) Include name, address, and phone number of appellant.

(2) Be clearly labeled or titled with the words ''NOTICE OF APPEAL.''

(3) Have on the face of any envelope in which the notice is mailed or delivered, in addition to the address, the clearly visible words ''NOTICE OF APPEAL.''

(4) Contain a statement of the decision being appealed that is sufficient to permit identification of the decision.

(5) If possible, attach either a copy of the notice of the administrative decision recieved under § 2.7, or when an official has failed to make a decision or take any action, attach a copy of the appellant's request for a decision or action under § 2.8 with a written statement that the official failed to make a decision or take any action or to establish a date by which a decision would be made upon the request.

(6) Certify that copies of the notice of appeal have been served on interested parties, as prescribed in § 2.12(a).

§ 2.10 Statement of reasons.

(a) A statement of reasons shall be filed by the appellant in every appeal, and shall be accompanied by or otherwise incorporate all supporting documents.

(b) The statement of reasons may be included in or filed with the notice of appeal.

(c) If the statement of reasons is not filed with the notice of appeal, the appellant shall file a separate statement of reasons in the office of the official whose decision is being appealed within 30 days after the notice of appeal was filed in that office.

(d) The statement of reasons whether filed with the notice of appeal or filed separately should:

(1) Be clearly labeled ''STATEMENT OF REASONS''.

(2) Have on the face of any envelope in which the statement of reasons is mailed or delivered, in addition to the address, the clearly visible words ''STATEMENT OF REASONS''.

[54 FR 6480, Feb. 10, 1989; 54 FR 7666, Feb. 22, 1989]

§ 2.11 Answer of interested party.

(a) Any interested party wishing to participate in an appeal proceeding should file a written answer responding to the appellant's notice of appeal and statement of reasons. An answer should describe the party's interest.

(b) An answer shall state the party's position or response to the appeal in any manner the party deems appropriate and may be accompanied by or

otherwise incorporate supporting documents.

(c) An answer must be filed within 30 days after receipt of the statement of reasons by the person filing an answer.

(d) An answer and any supporting documents shall be filed in the office of the official before whom the appeal is pending as specified in § 2.13.

(e) An answer should:

(1) Be clearly labelled or titled with the words ''ANSWER OF INTERESTED PARTY.''

(2) Have on the face of any envelope in which the answer is mailed or delivered, in addition to the address, the clearly visible words ''ANSWER OF INTERESTED PARTY,'' and

(3) Contain a statement of the decision being appealed that is sufficient to permit identification of the decision.

§ 2.12 Service of appeal documents.

(a) Persons filing documents in an appeal must serve copies of those documents on all other interested parties known to the person making the filing. A person serving a document either by mail or personal delivery must, at the time of filing the document, also file a written statement certifying service on each interested party, showing the document involved, the name and address of the party served, and the date of service.

(b) If an appeal is filed with the Interior Board of Indian Appeals, a copy of the notice of appeal shall also be sent to the Assistant Secretary—Indian Affairs. The notice of appeal sent to the Interior Board of Indian Appeals shall certify that a copy has been sent to the Assistant Secretary—Indian Affairs.

(c) If the appellant is an Indian or Indian tribe not represented by counsel, the official with whom the appeal is filed (i.e., official making the decision being appealed) shall, in the manner prescribed in this section, personally or by mail serve a copy of all appeal documents on the official who will decide the appeal and on each interested party known to the official making such service.

(d) Service of any document under this part shall be by personal delivery or by mail to the record address as specified in § 2.14. Service on a tribe shall be to the principal or designated tribal official or to the governing body.

(e) In all cases where a party is represented by an attorney in an appeal, service of any document on the attorney is service on the party represented. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney shall include the name of the party whom the attorney represents and indicate that service was made on the attorney representing that party.

(f) When an official deciding an appeal determines that there has not been service of a document affecting a person's interest, the official shall either serve the document on the person or direct the appropriate legal counsel to serve the document on the person and allow the person an opportunity to respond.

[54 FR 6480, Feb. 10, 1989; 54 FR 7666, Feb. 22, 1989]

§ 2.13 Filing documents.

(a) An appeal document is properly filed with an official of the Bureau of Indian Affairs:

(1) By personal delivery during regular business hours to the person designated to receive mail in the immediate office of the official, or

(2) By mail to the facility officially designated for receipt of mail addressed to the official; the document is considered filed by mail on the date that it is postmarked.

(b) Bureau of Indian Affairs offices receiving a misdirected appeal document shall forward the document to the proper office promptly. If a person delivers an appeal document to the wrong office or mails an appeal document to an incorrect address, no extension of time should be allowed because of the time necessary for a Bureau office to redirect the document to the correct address.

(c) Notwithstanding any other provision of this section, an official deciding an appeal shall allow late filing of a misdirected document, including a notice of appeal, where the official finds that the misdirection is the fault of the government.

§ 2.14 Record address.

(a) Every interested party who files a document in connection with an appeal shall, when he/she files the document, also indicate his/her address. Thereafter, any change of address shall be promptly reported to the official with whom the previous address was filed. The most current address on file under this subsection shall be deemed the proper address for all purposes under this part.

(b) The successors in interest of a party shall also promptly inform the official specified in paragraph (a) of this section of their interest in the appeal and their address.

(c) An appellant or interested party failing to file an address or change of address as specified in this section may not object to lack of notice or service attributable to his/her failure to indicate a new address.

§ 2.15 Computation of time.

In computing any period of time prescribed or allowed in this part, calendar days shall be used. Computation shall not include the day on which a decision being appealed was made, service or notice was received, a document was filed, or other event occurred causing time to begin to run. Computation shall include the last day of the period, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

§ 2.16 Extensions of time.

An official to whom an appeal is made may, upon a showing of good cause by a party and with notice to all other parties, extend the period for filing or serving any document; *provided*, however, that no extension will be granted for filing a notice of appeal under § 2.9 of this part or serve by itself to extend any period specified by law or regulation other than in this part.

§ 2.17 Summary dismissal.

(a) An appeal under this part will be dismissed if the notice of appeal is not filed within the time specified in § 2.9(a).

(b) An appeal under this part may be subject to summary dismissal for the following causes:

(1) If after the appellant is given an opportunity to amend them, the appeal documents do not state the reasons why the appellant believes the decision being appealed is in error, or the reasons for the appeal are not otherwise evident in the documents, or

(2) If the appellant has been required to post a bond and fails to do so.

§ 2.18 Consolidation of appeals.

Separate proceedings pending before one official under this part and involving common questions of law or fact may be consolidated by the official conducting such proceedings, pursuant to a motion by any party or on the initiative of the official.

§ 2.19 Action by Area Directors and Education Programs officials on appeal.

(a) Area Directors, Area Education Programs Administrators, Agency Superintendents for Education, Presidents of Post-Secondary Schools and the Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs) shall render written decisions in all cases appealed to them within 60 days after all time for pleadings (including all extensions granted) has expired. The decision shall include a statement that the decision may be appealed pursuant to this part, identify the official to whom it may be appealed and indicate thhe appeal procedures, including the 30-day time limit for filing a notice of appeal.

(b) A copy of the decision shall be sent to the appellant and each known interested party by certified or registered mail, return receipt requested. Such receipts shall become a permanent part of the record.

§ 2.20 Action by the Assistant Secretary—Indian Affairs on appeal.

(a) When a decision is appealed to the Interior Board of Indian Appeals, a copy of the notice of appeal shall be sent to the Assistant Secretary—Indian Affairs.

(b) The notice of appeal sent to the Interior Board of Indian Appeals shall

certify that a copy has been sent to the Assistant Secretary—Indian Affairs.

(c) In accordance with the provisions of §4.332(b) of title 43 of the Code of Federal Regulations, a notice of appeal to the Board of Indian Appeals shall not be effective until 20 days after receipt by the Board, during which time the Assistant Secretary—Indian Affairs shall have authority to decide to:

(1) Issue a decision in the appeal, or

(2) Assign responsibility to issue a decision in the appeal to a Deputy to the Assistant Secretary—Indian Affairs.

The Assistant Secretary—Indian Affairs will not consider petitions to exercise this authority. If the Assistant Secretary—Indian Affairs decides to issue a decision in the appeal or to assign responsibility to issue a decision in the appeal to a Deputy to the Assistant Secretary—Indian Affairs, he/she shall notify the Board of Indian Appeals, the deciding official, the appellant, and interested parties within 15 days of his/her receipt of a copy of the notice of appeal. Upon receipt of such notification, the Board of Indian Appeals shall transfer the appeal to the Assistant Secretary—Indian Affairs. The decision shall be signed by the Assistant Secretary—Indian Affairs or a Deputy to the Assistant Secretary—Indian Affairs within 60 days after all time for pleadings (including all extensions granted) has expired. If the decision is signed by the Assistant Secretary—Indian Affairs, it shall be final for the Department and effective immediately unless the Assistant Secretary—Indian Affairs provides otherwise in the decision. Except as otherwise provided in §2.20(g), if the decision is signed by a Deputy to the Assistant Secretary—Indian Affairs, it may be appealed to the Board of Indian Appeals pursuant to the provisions of 43 CFR part 4, subpart D.

(d) A copy of the decision shall be sent to the appellant and each known interested party by certified or registered mail, return receipt requested. Such receipts shall become a permanent part of the record.

(e) If the Assistant Secretary—Indian Affairs or the Deputy to the Assistant Secretary—Indian Affairs to whom the authority to issue a decision has been assigned pursuant to §2.20(c) does not make a decision within 60 days after all time for pleadings (including all extensions granted) has expired, any party may move the Board of Indian Appeals to assume jurisdiction subject to 43 CFR 4.337(b). A motion for Board decision under this section shall invest the Board with jurisdiction as of the date the motion is received by the Board.

(f) When the Board of Indian Appeals, in accordance with 43 CFR 4.337(b), refers an appeal containing one or more discretionary issues to the Assistant Secretary—Indian Affairs for further consideration, the Assistant Secretary—Indian Affairs shall take action on the appeal consistent with the procedures in this section.

(g) The Assistant Secretary—Indian Affairs shall render a written decision in an appeal from a decision of the Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs) within 60 days after all time for pleadings (including all extensions granted) has expired. A copy of the decision shall be sent to the appellant and each known interested party by certified or registered mail, return receipt requested. Such receipts shall become a permanent part of the record. The decision shall be final for the Department and effective immediately unless the Assistant Secretary—Indian Affairs provides otherwise in the decision.

§2.21 Scope of review.

(a) When a decision has been appealed, any information available to the reviewing official may be used in reaching a decision whether part of the record or not.

(b) When the official deciding an appeal believes it appropriate to consider documents or information not contained in the record on appeal, the official shall notify all interested parties of the information and they shall be given not less than 10 days to comment on the information before the appeal is decided. The deciding official shall include in the record copies of documents or a description of the information used in arriving at the decision. Except where disclosure of the actual documents used may be prohibited by law, copies of the information shall be made

available to the parties upon request and at their expense.

PART 5—PREFERENCE IN EMPLOYMENT

Sec.
5.1 Definitions.
5.2 Appointment actions.
5.3 Application procedure for preference eligibility.
5.4 Information collection.

AUTHORITY: 4 Stat. 737, 25 U.S.C. 43; 22 Stat. 88, 25 U.S.C. 46; 28 Stat. 313, 25 U.S.C. 44; 24 Stat. 389, 25 U.S.C. 348; and 48 Stat. 986, 25 U.S.C. 472 and 479.

§ 5.1 Definitions.

For purposes of making appointments to vacancies in all positions in the Bureau of Indian Affairs a preference will be extended to persons of Indian descent who are:

(a) Members of any recognized Indian tribe now under Federal Jurisdiction;

(b) Descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation;

(c) All others of one-half or more Indian blood of tribes indigenous to the United States;

(d) Eskimos and other aboriginal people of Alaska; and

(e) For one (1) year or until the Osage Tribe has formally organized, whichever comes first, effective January 5, 1989, a person of at least one-quarter degree Indian ancestry of the Osage Tribe of Indians, whose rolls were closed by an act of Congress.

[43 FR 2393, Jan. 17, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 283, Jan. 5, 1989]

§ 5.2 Appointment actions.

(a) Preference will be afforded a person meeting any one of the standards of § 5.1 whether the appointment involves initial hiring, reinstatement, transfer, reassignment or promotion.

(b) Preference eligibles may be given a Schedule A excepted appointment under Exception Number 213.3112(a)(7). However, if the individuals are within reach on a Civil Service Register, they may be given a competitive appointment.

[43 FR 2393, Jan. 17, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 49 FR 12702, Mar. 30, 1984]

§ 5.3 Application procedure for preference eligibility.

(a) Proof of eligibility must be submitted with the person's application for a position.

(b) In order for a person to be considered a preference eligible according to the standards of § 5.1, they must submit proof of membership, descendancy or degree of Indian ancestry as indicated on rolls or records acceptable to the Secretary.

[43 FR 2393, Jan. 17, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 5.4 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the information collection requirements contained in part 5 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

[54 FR 283, Jan. 5, 1989]

SUBCHAPTER B—LAW AND ORDER

PART 10—INDIAN COUNTRY DETENTION FACILITIES AND PROGRAMS

Sec.

10.1 Why are policies and standards needed for Indian country detention programs?
10.2 Who is responsible for developing and maintaining the policies and standards for detention and holding facilities in Indian country?
10.3 Who must follow these policies and standards?
10.4 What happens if the policies and standards are not followed?
10.5 Where can I find the policies and standards for the administration, operation, services, and physical plant/construction of Indian country detention, community residential, and holding facilities?
10.6 How is the BIA assured that the policies and standards are being applied uniformly and facilities are properly accredited?
10.7 Where do I find help or receive technical assistance in complying with the policies and standards?
10.8 What minimum records must be kept and reports made at each detention, community residential, or holding facility in Indian country?
10.9 If a person is detained or incarcerated in an Indian country detention, community residential, or holding facility, how would they know what their rights, privileges, safety, protection and expected behavior would be?
10.10 What happens if I believe my civil rights have been violated while incarcerated in an Indian country detention or holding facility?
10.11 How would someone detained or incarcerated, or their representative, get the BIA policies and standards?

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 13, 2417, 2453, and 2802.

SOURCE: 61 FR 34374, July 2, 1996, unless otherwise noted.

§10.1 Why are policies and standards needed for Indian country detention programs?

Policies and standards are required to ensure that all Bureau of Indian Affairs (BIA) and tribal entities that receive Federal funding for the operation, maintenance, design and construction or renovation of detention facilities, community residential, or holding facilities are supporting constitutional rights and are complying with the Indian Law Enforcement Reform Act of 1990. Self-governance tribes and tribes with limited jurisdiction are encouraged to follow the regulations in this part, and other BIA manuals and handbooks. The provision for funding tribes for detention programs under the Indian Alcohol and Substance Abuse Prevention and Treatment Act, Public Law 99–570, (25 U.S.C. 2453) requires standards and procedures for such facilities.

[61 FR 34374, July 2, 1996; 61 FR 65473, Dec. 13, 1996]

§10.2 Who is responsible for developing and maintaining the policies and standards for detention and holding facilities in Indian country?

The Director, Office of Law Enforcement Services who reports to the Deputy Commissioner of Indian Affairs, BIA, establishes policies, procedures, and standards for the operations, design, planning, maintenance, renovation, and construction of detention programs in the BIA and by tribal contract under Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended, 25 U.S.C. 450.

§10.3 Who must follow these policies and standards?

You must follow these minimum policies, standards, and guides if you are part of the BIA or tribal detention or rehabilitation program receiving Federal funding. Self-governance tribes and tribes with limited jurisdiction are encouraged to follow the regulations in this part, and other BIA manuals and handbooks. Detention officers, guards, cooks and other staff conducting business in the facilities must meet minimum standards of law enforcement personnel as prescribed in 25 CFR part 12, subpart D, ''Qualifications and Training Requirements.'' Those tribal programs not receiving Federal funding under the Indian Self-Determination and Education Assistance Act (Public Law 93–638, as amended) who wish to be accredited are encouraged to use the policies and standards in that part

since they have been modified and approved for Indian country.

§ 10.4 What happens if the policies and standards are not followed?

The risk for human and civil rights violations due to lack of common standards will subject the operation and/or facility to unnecessary exposure to liability. Lack of employee standards, particularly for training and background checks, will increase the risk of misconduct and vicarious liability of the tribes and the Federal government through tort claims. Funding sources for detention programs may become scarce to nonexistent because of contract noncompliance. The tribes' opportunity to receive funding from potential resource sharing agreements with other law enforcement agencies may be damaged because the facility may have to be closed for cause due to violation of the life safety codes.

§ 10.5 Where can I find the policies and standards for the administration, operation, services, and physical plant/construction of Indian country detention, community residential, and holding facilities?

The Bureau of Indian Affairs, Department of the Interior, maintains a manual of policies and procedures called the *Bureau of Indian Affairs Manual (BIAM).* The Chapter 69 BIAM titled ''Indian Country Detention Facilities and Programs,'' contains the BIA's policies, procedures, and standards for detention and holding programs in Indian country. The standards for the programs within the *BIAM* are in handbook format for easy field reference and use. Copies of the Chapter 69 *BIAM* and handbooks may be obtained from the Director, Office of Law Enforcement Services.

[61 FR 34374, July 2, 1996; 61 FR 65473, Dec. 13, 1996]

§ 10.6 How is the BIA assured that the policies and standards are being applied uniformly and facilities are properly accredited?

The tribes and BIA programs will use a phased approach to meeting all nonmandatory detention standards and will document progress on uniform reporting. The BIA Office of Law Enforcement Services will conduct periodic operational evaluations for oversight.

§ 10.7 Where do I find help or receive technical assistance in complying with the policies and standards?

The BIA has a trained Detention Specialist on the staff of the Office of Law Enforcement Services, Albuquerque, New Mexico, who is available to conduct evaluations and provide technical assistance or guidance in all facets of Indian country detention programs.

§ 10.8 What minimum records must be kept and reports made at each detention, community residential, or holding facility in Indian country?

The Director, Office of Law Enforcement Services, BIA, will develop all necessary requirements for maintaining records, reporting data, and archiving information. These requirements will be published in 69 BIAM, ''Indian Country Detention Facilities and Programs.''

[61 FR 34374, July 2, 1996; 61 FR 65473, Dec. 13, 1996]

§ 10.9 If a person is detained or incarcerated in an Indian country detention, community residential, or holding facility, how would they know what their rights, privileges, safety, protection and expected behavior would be?

When an individual is incarcerated in an Indian country detention, community residential, or holding facility, he/she will be given, or in some cases notified of the availability of, an Inmate Handbook. This book of guidelines describes in detail the inmate's rights, privileges, protection and safety, cleanliness and sanitation, and general health and nutritional standards. The Inmate Handbook describes the emergency evacuation procedures, medical, counseling, rehabilitation services, visitation procedures, and other appropriate information. The Inmate Handbook is published by the Director, Office of Law Enforcement Services and maintained by the detention facility administrator at each facility location.

[61 FR 34374, July 2, 1996; 61 FR 65473, Dec. 13, 1996]

§ 10.10 What happens if I believe my civil rights have been violated while incarcerated in an Indian country detention or holding facility?

All allegations of civil rights violations must be reported immediately to the Internal Affairs Branch of the Office of Law Enforcement Services. This office will ensure that such allegations are immediately reported to the Civil Rights Division of the U.S. Department of Justice through established procedures. The BIA Internal Affairs Branch may also investigate alleged violations and make recommendations for additional action as necessary. Detailed instructions on the procedure to report violations can be found in the Inmate Handbook.

§ 10.11 How would someone detained or incarcerated, or their representative, get the BIA policies and standards?

At each detention, community residential, or holding facility located in a tribal jurisdiction where federal funds are used for operations or maintenance programs, the BIA's policies, standards, and procedures will be made available upon request. The Inmate Handbook will be made available to all persons at the time they are incarcerated or detained in a facility. There may be times when this may be delayed due to the physical or mental condition of the person at time of incarceration. In these cases, the Inmate Handbook will be made available when the person is deemed receptive and cognizant by the detention officer in charge. All policies, standards, procedures, and guidelines are available at each facility to the public or by writing to the Director, Office of Law Enforcement Services.

[61 FR 34374, July 2, 1996; 61 FR 65473, Dec. 13, 1996]

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

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AUTHORITY: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; 42 Stat. 208, 25 U.S.C. 13; 38 Stat. 586, 25 U.S.C. 200.

SOURCE: 58 FR 54411, Oct. 21, 1993, unless otherwise noted.

Subpart A—Application; Jurisdiction

§11.100 Listing of Courts of Indian Offenses.

(a) Except as otherwise provided in this title, the regulations under this part are applicable to the Indian country (as defined in 18 U.S.C. 1151) occupied by the following tribes:

(1) Red Lake Band of Chippewa Indians (Minnesota).

(2) Confederated Tribes of the Goshute Reservation (Nevada).

(3) Lovelock Paiute Tribe (Nevada).

(4) Te-Moak Band of Western Shoshone Indians (Nevada).

(5) Yomba Shoshone Tribe (Nevada).

(6) Kootenai Tribe (Idaho).

(7) Shoalwater Bay Tribe (Washington).

(8) Eastern Band of Cherokee Indians (North Carolina).

(9) For the following tribes located in the former Oklahoma Territory (Oklahoma):

(i) Absentee Shawnee Tribe of Indians of Oklahoma

(ii) Apache Tribe of Oklahoma

(iii) Caddo Tribe of Oklahoma

(iv) Cheyenne-Arapaho Tribe of Oklahoma

(v) Citizen Band of Potawatomi Indians of Oklahoma

(vi) Comanche Tribe of Oklahoma (except Comanche Children's Court)

(vii) Delaware Tribe of Western Oklahoma

(viii) Fort Sill Apache Tribe of Oklahoma

(ix) Iowa Tribe of Oklahoma

(x) Kaw Tribe of Oklahoma

(xi) Kickapoo Tribe of Oklahoma

(xii) Kiowa Tribe of Oklahoma

(xiii) Otoe-Missouria Tribe of Oklahoma

(xiv) Pawnee Tribe of Oklahoma

(xv) Ponca Tribe of Oklahoma

(xvi) Tonkawa Tribe of Oklahoma

(xvii) Wichita and Affiliated Tribes of Oklahoma.

(10) Hoopa Valley Tribe, Yurok Tribe, and Coast Indian Community of California (California Jurisdiction limited to special fishing regulations).

(11) Louisiana Area (includes Coushatta and other tribes in the State of Louisiana which occupy Indian country and which accept the application of this part);
Provided that this part shall not apply to any Louisiana tribe other than the Coushatta Tribe until notice of such application has been published in the FEDERAL REGISTER.

(12) For the following tribes located in the former Indian Territory (Oklahoma):

(i) Chickasaw Nation

(ii) Choctaw Nation

(iii) Thlopthlocco Tribal Town

(iv) Seminole Nation

(v) Eastern Shawnee Tribe

(vi) Miami Tribe

(vii) Modoc Tribe

(viii) Ottawa Tribe

(ix) Peoria Tribe

(x) Quapaw Tribe

(xi) Wyandotte Tribe

(xii) Seneca-Cayuga Tribe

(xiii) Osage Tribe.

(13) Ute Mountain Ute Tribe (Colorado).

(b) It is the purpose of the regulations in this part to provide adequate machinery for the administration of justice for Indian tribes in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction.

(c) The regulations in this part shall continue to apply to tribes listed under §11.100(a) until a law and order code

which includes the establishment of a court system has been adopted by the tribe in accordance with its constitution and by-laws or other governing documents, has become effective, and the Assistant Secretary—Indian Affairs or his or her designee has received a valid tribal enactment identifying the effective date of the code's implementation, and the name of the tribe has been deleted from the listing of Courts of Indian Offenses under § 11.100(a).

(d) For the purposes of the enforcement of the regulations in this part, an Indian is defined as a person who is a member of an Indian tribe which is recognized by the Federal Government as eligible for services from the BIA, and any other individual who is an ''Indian'' for purposes of 18 U.S.C. 1152–1153.

(e) The governing body of each tribe occupying the Indian country over which a Court of Indian Offenses has jurisdiction may enact ordinances which, when approved by the Assistant Secretary—Indian Affairs or his or her designee, shall be enforceable in the Court of Indian Offenses having jurisdiction over the Indian country occupied by that tribe, and shall supersede any conflicting regulation in this part.

(f) Each Court of Indian Offenses shall apply the customs of the tribe occupying the Indian country over which it has jurisdiction to the extent that they are consistent with the regulations of this part.

[58 FR 54411, Oct. 21, 1993, as amended at 59 FR 48722, Sept. 22, 1994; 61 FR 10674, Mar. 15, 1996]

§ 11.101 Prospective application of regulations.

Civil and criminal causes of actions arising prior to the effective date of these regulations shall not abate but shall be determined in accordance with the regulations in effect at the time the cause arose.

§ 11.102 Criminal jurisdiction; limitation of actions.

(a) Except as otherwise provided in this title, each Court of Indian Offenses shall have jurisdiction over any action by an Indian (hereafter referred to as person) that is made a criminal offense under this part and that occurred within the Indian country subject to the court's jurisdiction.

(b) No person shall be prosecuted, tried or punished for any offense unless the complaint is filed within five years after such offense shall have been committed.

§ 11.103 Civil jurisdiction; limitation of actions.

(a) Except as otherwise provided in this title, each Court of Indian Offenses shall have jurisdiction over any civil action arising within the territorial jurisdiction of the court in which the defendant is an Indian, and of all other suits between Indians and non-Indians which are brought before the court by stipulation of the parties.

(b) Any civil action commenced in a Court of Indian Offenses shall be barred unless the complaint is filed within three years after the right of action first accrues.

§ 11.104 Jurisdictional limitations.

(a) No Court of Indian Offenses may exercise any jurisdiction over a Federal or state official that it could not exercise if it were a tribal court.

(b) Unless otherwise provided by a resolution or ordinance of the tribal governing body of the tribe occupying the Indian country over which a Court of Indian country over which a Court of Indian Offenses has jurisdiction, no Court of Indian Offenses may adjudicate an election dispute or take jurisdiction over a suit against the tribe or adjudicate any internal tribal government dispute.

(c) The decision of the BIA on who is a tribal official is binding in a Court of Indian Offenses.

(d) The Department of the Interior will accord the same weight to decisions of a Court of Indian Offenses that it accords to decisions of a tribal court.

(e) A tribe may not be sued in a Court of Indian Offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution or ordinance.

Subpart B—Courts of Indian Offenses; Personnel; Administration

§11.200 Composition of court.

(a) Each court shall be composed of a trial division and an appellate division.

(b) A chief magistrate will be appointed for each court who will, in addition to other judicial duties, be responsible for the administration of the court and the supervision of all court personnel.

(c) Appeals shall be heard by a panel of three magistrates who were not involved in the trial of the case.

(d) Decisions of the appellate division are final and are not subject to administrative appeals within the Department of the Interior.

§11.201 Appointment of magistrates.

(a) Each magistrate shall be appointed by the Assistant Secretary—Indian Affairs or his or her designee subject to confirmation by a majority vote of the tribal governing body of the tribe occupying the Indian country over which the court has jurisdiction, or, in the case of multi-tribal courts, confirmation by a majority of the tribal governing bodies of the tribes under the jurisdiction of a Court of Indian Offenses.

(b) Each magistrate shall hold office for a period of four years, unless sooner removed for cause or by reason of the abolition of the office, but is eligible for reappointment.

(c) No person is eligible to serve as a magistrate of a Court of Indian Offenses who has ever been convicted of a felony or, within one year of the date of service or application, of a misdemeanor.

(d) No magistrate shall be qualified to act as such wherein he or she has any direct conflicting interest, real or apparent.

(e) A tribal governing body may set forth such other qualifications for magistrates of the Court of Indian Offenses as it deems appropriate, subject to the approval of the Assistant Secretary—Indian Affairs, or his or her designee.

(f) A tribal governing body may also recommend requirements for the training of magistrates of the Court of Indian Offenses to the Assistant Secretary—Indian Affairs.

§11.202 Removal of magistrates.

Any magistrate of a Court of Indian Offenses may be suspended, dismissed or removed by the Assistant Secretary—Indian Affairs, or his or her designee, for cause, upon the written recommendation of the tribal governing body, and, in the case of multi-tribal courts, upon the recommendation of a majority of the tribal governing bodies of the tribes under the jurisdiction of a Court of Indian Offenses, or pursuant to his or her own discretion.

§11.203 Court clerks.

(a) Except as may otherwise be provided in a contract with the tribe occupying the Indian country over which the court has jurisdiction, the chief magistrate shall appoint a clerk of court for the Court of Indian Offenses within his or her jurisdiction, subject to the superintendent's approval.

(b) The clerk shall render assistance to the court, to local law enforcement officers and to individual members of the tribe in the drafting of complaints, subpoenas, warrants, commitments, and other documents incidental to the functions of the court. The clerk shall also attend and keep a record of all proceedings of the court and manage all monies received by the court.

(c) The clerk of court shall forward any monies received on judgments due to the person, agency, or corporation to which entitled, within 30 days unless directed otherwise by a magistrate of the Court of Indian Offenses.

§11.204 Prosecutors.

Except as may otherwise be provided in a contract with the tribe occupying the Indian country over which the court has jurisdiction, the superintendent shall appoint a prosecutor for each Court of Indian Offenses within his or her jurisdiction.

§11.205 Standards governing appearance of attorneys and lay counselors.

(a) No defendant in a criminal proceeding shall be denied the right to counsel.

(b) The chief magistrate shall prescribe in writing standards governing the admission and practice in the Court of Indian Offenses of professional attorneys and lay counselors.

§ 11.206 Court records.

(a) Each Court of Indian Offenses shall keep a record of all proceedings of the court containing the title of the case, the names of the parties, the complaint, all pleadings, the names and addresses of all witnesses, the date of any hearing or trial, the name of any magistrate conducting such hearing or trial, the findings of the court or jury, the judgment and any other information the court determines is important to the case.

(b) The record in each case shall be available for inspection by the parties to the case.

(c) Except for cases in which a juvenile is a party or the subject of a proceeding, and for cases whose records have been sealed by the court, all case records shall be available for inspection by the public.

(d) Such court records are part of the records of the BIA agency having jurisdiction over the Indian country where the Court of Indian Offenses is located and shall be protected in accordance with 44 U.S.C. 3102.

§ 11.207 Cooperation by Bureau of Indian Affairs Employees.

(a) No employee of the BIA may obstruct, interfere with, or control the functions of any Court of Indian Offenses, or influence such functions in any manner except as permitted by Federal statutes or the regulations in this part or in response to a request for advice or information from the court.

(b) Employees of the BIA shall assist the court, upon its request, in the preparation and presentation of facts in the case and in the proper treatment of individual offenders.

§ 11.208 Payment of judgments from individual Indian money accounts.

(a) Any Court of Indian Offenses may make application to the superintendent who administers the individual Indian money account of a defendant who has failed to satisfy a money judgment from the court to obtain payment of the judgment from funds in the defendant's account. The court shall certify the record of the case to the superintendent. If the superintendent so directs, the disbursing agent shall pay over to the injured party the amount of the judgment or such lesser amount as may be specified by the superintendent.

(b) A judgment of a Court of Indian Offenses shall be considered a lawful debt in all proceedings held by the Department of the Interior or by a Court of Indian Offenses to distribute decedents' estates.

§ 11.209 Disposition of fines.

All money fines imposed for the commission of an offense shall be in the nature of an assessment for the payment of designated court expenses. The fines assessed shall be paid over by the clerk of the court to the disbursing agent of the reservation for deposit as a ''special deposit, court funds'' to the disbursing agent's official credit in the Treasury of the United States. The disbursing agent shall withdraw such funds, in accordance with existing regulations, upon order of the clerk of the court signed by a judge of the court for the payment of specified expenses. The disbursing agent and the clerk of the court shall keep an account of all such deposits and withdrawals available for public inspection.

Subpart C—Criminal Procedure

§ 11.300 Complaints.

(a) A complaint is a written statement of the essential facts charging that a named individual(s) has committed a particular offense. All criminal prosecutions shall be initiated by a complaint filed with the court by a law enforcement officer and sworn to by a person having personal knowledge of the offense.

(b) Complaints shall contain:

(1) The signature of the complaining witness, or witnesses, sworn before a magistrate, a court clerk, a prosecutor, or any law enforcement officer.

(2) A written statement by the complaining witness or witnesses having personal knowledge of the violation,

describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained.

(3) The name or description of the person alleged to have committed the offense.

(4) A description of the offense charged and the section of the code allegedly violated.

(c) Complaints must be submitted without unnecessary delay by a law enforcement officer to the prosecutor and, if he or she approves, to a judge to determine whether an arrest warrant or summons should be issued.

(d) When an accused has been arrested without a warrant, a complaint shall be filed forthwith with the court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.

§ 11.301 Arrests.

(a) Arrest is the taking of a person into police custody in order that he or she may be held to answer for a criminal offense.

(b) No law enforcement officer shall arrest any person for a criminal offense except when:

(1) The officer shall have a warrant signed by a magistrate commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or

(2) The offense shall occur in the presence of the arresting officer; or

(3) The officer shall have probable cause to believe that the person arrested has committed an offense.

§ 11.302 Arrest warrants.

(a) Each magistrate of a Court of Indian Offenses shall have the authority to issue warrants to apprehend any person the magistrate has probable cause to believe has committed a criminal offense in violation of the regulations under this part based on a written complaint filed with the court by a law enforcement officer and bearing the signature of the complainant.

(b) The arrest warrant shall contain the following information:

(1) Name or description and address, if known, of the person to be arrested.

(2) Date of issuance of the warrant.

(3) Description of the offense charged.

(4) Signature of the issuing magistrate.

(c) Such warrants may be served only by a BIA or tribal police officer or other officer commissioned to enforce the regulations of this part.

§ 11.303 Notification of rights prior to custodial interrogation.

Prior to custodial interrogation, the suspect shall be advised of the following rights:

(a) That he or she has the right to remain silent.

(b) That any statements made by him or her may be used against him or her in court.

(c) That he or she has the right to obtain counsel and, if indigent, to have counsel appointed for him/her.

§ 11.304 Summons in lieu of warrant.

(a) When otherwise authorized to arrest a suspect, a law enforcement officer or a magistrate may, in lieu of a warrant, issue a summons commanding the accused to appear before the Court of Indian Offenses at a stated time and place and answer to the charge.

(b) The summons shall contain the same information as a warrant, except that it may be signed by a police officer.

(c) The summons shall state that if a defendant fails to appear in response to a summons, a warrant for his or her arrest shall be issued.

(d) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his or her usual residence or place of business with any person 18 years of age or older who also resides or works there. Service shall be made by an authorized law enforcement officer, who shall file with the record of the case a form indicating when the summons was served.

§ 11.305 Search warrants.

(a) Each magistrate of a Court of Indian Offenses shall have the authority to issue a warrant for the search of premises and for the seizure of physical evidence of a criminal violation under the regulations of this part located

within the Indian country over which the court has jurisdiction.

(b) No warrant for search or seizure may be issued unless it is based on a written and signed statement establishing, to the satisfaction of the magistrate, that probable cause exists to believe that the search will lead to discovery of evidence of a criminal violation under the regulations of this part.

(c) No warrant for search or seizure shall be valid unless it contains the name or description of the person, vehicle, or premises to be searched, describes the evidence to be seized, and bears the signature of the magistrate who issued it.

(d) Warrants may be executed only by a BIA or tribal police officer or other official commissioned to enforce the regulations under this part. The executing officer shall return the warrant to the Court of Indian Offenses within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not returned within such time limits shall be void.

§ 11.306 Search without a warrant.

No law enforcement officer shall conduct any search without a valid warrant except:

(a) Incident to making a lawful arrest; or

(b) With the voluntary consent of the person being searched; or

(c) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen property, or property otherwise unlawfully possessed.

§ 11.307 Disposition of seized property.

(a) The officer serving and executing a warrant shall make an inventory of all seized property, and a copy of such inventory shall be left with every person from whom property is seized.

(b) A hearing shall be held by the Court of Indian Offenses to determine the disposition of all seized property. Upon satisfactory proof of ownership, the property shall be delivered immediately to the owner, unless such property is contraband or is to be used as evidence in a pending case. Property seized as evidence shall be returned to the owner after final judgment. Property confiscated as contraband shall be destroyed or otherwise lawfully disposed of as ordered by the Court of Indian Offenses.

§ 11.308 Commitments.

No person may be detained, jailed or imprisoned under the regulations of this part for longer than 48 hours unless the Court of Indian Offenses issues a commitment bearing the signature of a magistrate. A temporary commitment shall be issued for each person held before trial. A final commitment shall be issued for each person sentenced to jail after trial.

§ 11.309 Arraignments.

(a) Arraignment is the bringing of an accused before the court, informing him or her of his or her rights and of the charge(s) against him or her, receiving the plea, and setting conditions of pretrial release as appropriate in accordance with this part.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular session of court.

(c) Before an accused is required to plead to any criminal charges the magistrate shall:

(1) Read the complaint to the accused and determine that he or she understands it and the section(s) of this part that he or she is charged with violating, including the maximum authorized penalty; and

(2) Advise the accused that he or she has the right to remain silent, to be tried by a jury if the offense charged is punishable by imprisonment, to be represented by counsel (which shall be paid for by the government if the accused is indigent) and that the arraignment will be postponed should he or she desire to consult with counsel.

(d) The magistrate shall call upon the defendant to plead to the charge:

(1) If the accused pleads ''not guilty'' to the charge, the magistrate shall then inform the accused of the trial date and set conditions for release prior to trial.

(2) If the accused pleads ''guilty'' to the charge, the magistrate shall accept

the plea only if he or she is satisfied that the plea is made voluntarily and that the accused understands the consequences of the plea, including the rights waived by the plea. The magistrate may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he or she deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the court prior to sentencing.

(3) If the accused refuses to plead, the judge shall enter a plea of ''not guilty'' on his or her behalf.

(3) The court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that the interest of justice would be served by doing so.

§ 11.310 Bail.

(a) Each person charged with a criminal offense under this part shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

(1) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times;

(2) Release to the custody of a designated person or organization agreeing to assure the accused's appearance;

(3) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release;

(4) Release after deposit of a bond or other sufficient collateral in an amount specified by the magistrate or a bail schedule;

(5) Release after execution of a bail agreement by two responsible members of the community; or

(6) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

(b) Any law enforcement officer authorized to do so by the court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the court.

(c) A convicted person may be released from custody pending appeal on such conditions as the magistrate determines will reasonably assure the appearance of the accused unless the magistrate determines that release of the accused is likely to pose a danger to the community, the accused, or any other person.

(d) The Court of Indian Offenses may revoke its release of the defendant and order him or her committed at any time where it determines that the conditions of release will not reasonably assure the appearance of the defendant, or if any conditions of release have been violated.

§ 11.311 Subpoenas.

(a) Upon request of any party, the court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. The clerk of the court may act on behalf of the court and issue subpoenas which have been signed either by the clerk of the court or by a magistrate of the Court of Indian Offenses and which are to be served within Indian country over which the Court of Indian Offenses has jurisdiction.

(b) A subpoena shall bear the signature of the chief magistrate of the Court of Indian Offenses, and it shall state the name of the court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

(c) A subpoena may be served at any place but any subpoena to be served outside of the Indian country over which the Court of Indian Offenses has jurisdiction shall be issued personally by a magistrate of the Court of Indian Offenses.

(d) A subpoena may be served by any law enforcement officer or other person appointed by the court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his or her place of residence or business with any person 18 years of age or older who also resides or works there.

(e) Proof of service of the subpoena shall be filed with the clerk of the court by noting on the back of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

(f) In the absence of a justification satisfactory to the court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench warrant may be issued for his or her arrest.

§ 11.312 Witness fees.

(a) Each fact witness answering a subpoena is entitled to a fee of not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1) and any of its subsequent revisions, plus actual cost of travel. Each fact witness testifying at a hearing shall receive pay for a full day (eight hours) plus travel allowance.

(b) The Court of Indian Offenses may order any party calling a witness to testify without a subpoena to compensate the witness for actual traveling and living expenses incurred in testifying.

(c) If the Court of Indian Offenses finds that a complaint was not filed in good faith but with a frivolous or malicious intent, it may order the complainant to reimburse the court for expenditures incurred under this section, and such order may constitute a judgment upon which execution may levy.

§ 11.313 Trial procedure.

(a) The time and place of court sessions, and all other details of judicial procedure shall be set out in rules of court approved by the chief magistrate of the Court of Indian Offenses.

(b) Courts of Indian Offenses shall be bound by the Federal Rules of Evidence, except insofar as such rules are superseded by order of the court or by the existence of inconsistent tribal rules of evidence.

§ 11.314 Jury trials.

(a) In any criminal case punishable by a sentence of six months in jail and in any criminal case in which the prosecutor informs the court before the case comes to trial that a jail sentence will be sought, the defendant has a right, upon demand, to a jury trial. If the prosecutor informs the court that no prison sentence will be sought, the court may not impose a prison sentence for the offense.

(b) A jury shall consist of eight Indian residents of the vicinity in which trial is held, selected from a list of eligible jurors prepared each year by the court. An eligible juror shall be at least 18 years of age, shall not have been convicted of a felony, and shall not otherwise be unqualified according to standards established by the Court of Indian Offenses under its general rulemaking authority. Any party may challenge without cause not more than three members of the jury panel so chosen.

(c) The magistrate shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of the law.

(d) The jury shall deliberate in secret and return a verdict of guilty or not guilty. Six out of the eight jurors must concur to render a verdict.

(e) Each juror who serves on a jury is entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1), and any of its subsequent revisions, plus mileage not to exceed the maximum rate per mile established by the Federal Government of jurors and witnesses. Each juror shall receive pay for a full day (eight hours) for any portion of a day served, plus travel allowance.

§ 11.315 Sentencing.

(a) Any person who has been convicted in a Court of Indian Offenses of a criminal offense under the regulations of this part may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than six months.

(2) A money fine in an amount not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than five hundred dollars ($500).

(3) Labor for the benefit of the tribe.

(4) Rehabilitative measures.

(b) In addition to or in lieu of the penalties provided in paragraph (a) of this section, the court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money damages, or the performance of any other act for the benefit of the injured party.

(c) If, solely because of indigence, a convicted offender is unable to pay forthwith a money fine assessed under any applicable section, the court shall allow him or her a reasonable period of time to pay the entire sum or allow him or her to make reasonable installment payments to the clerk of the court at specified intervals until the entire sum is paid. If the offender defaults on such payments the court may find him or her in contempt of court and imprison him or her accordingly.

§ 11.316 Probation.

(a) Where a sentence of imprisonment has been imposed on a convicted offender, the Court of Indian Offenses may, in its discretion, suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the court, provided that the period of probation shall not exceed one year.

(b) Any person who violates the terms of his or her probation may be required by the court to serve the sentence originally imposed or such part of it as the court may determine to be suitable giving consideration to all the circumstances, provided that such revocation of probation shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his or her actions.

§ 11.317 Parole.

(a) Any person sentenced by the court of detention or labor shall be eligible for parole at such time and under such reasonable conditions as set by the Court of Indian Offenses.

(b) Any person who violates the conditions of his or her parole may be required by the court to serve the whole original sentence, provided that such revocation or parole shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his or her actions.

§ 11.318 Extradition.

Any Court of Indian Offenses may order delivery to the proper state, tribal or BIA law enforcement authorities of any person found within the jurisdiction of the court, who is charged with an offense in another jurisdiction. Prior to delivery to the proper officials, the accused shall be accorded a right to contest the propriety of the court's order in a hearing before the court.

Subpart D—Criminal Offenses

§ 11.400 Assault.

(a) A person is guilty of assault if he or she:

(1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(2) Negligently causes bodily injury to another with a deadly weapon; or

(3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

(b) Assault is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

§ 11.401 Recklessly endangering another person.

A person commits a misdemeanor if he or she recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. Recklessness and danger shall be presumed where a person knowingly points a firearm at or in the direction of another person, whether or not the actor believed the firearm to be loaded.

[58 FR 54411, Oct. 21, 1993; 58 FR 58729, Nov. 3, 1993]

§ 11.402 Terroristic threats.

A person is guilty of a misdemeanor if he or she threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation

of a building, place of assembly or facility of public transportation, or otherwise to cause serious public inconvenience or in reckless disregard of the risk of causing such terror or inconvenience.

§ 11.403 Unlawful restraint.

A person commits a misdemeanor if he or she knowingly:

(a) Restrains another unlawfully in circumstances exposing him or her to risk of serious bodily injury; or

(b) Holds another in a condition of involuntary servitude.

§ 11.404 False imprisonment.

A person commits a misdemeanor if he or she knowingly restrains another unlawfully so as to interfere substantially with his or her liberty.

§ 11.405 Interference with custody.

(a) *Custody of children*. A person commits a misdemeanor if he or she knowingly or recklessly takes or entices any child under the age of 18 from the custody of his or her parent, guardian or other lawful custodian, when he or she has no privilege to do so.

(b) *Custody of committed person*. A person is guilty of a misdemeanor if he or she knowingly or recklessly takes or entices any committed person away from lawful custody when he or she does not have the privilege to do so. *Committed person* means, in addition to anyone committed under judicial warrant, any orphan, neglected or delinquent child, mentally defective or insane person, or other dependent or incompetent person entrusted to another's custody by or through a recognized social agency or otherwise by authority of law.

§ 11.406 Criminal coercion.

(a) A person is guilty of criminal coercion if, with purpose to unlawfully restrict another's feedom of action to his or her detriment, he or she threatens to:

(1) Commit any criminal offense; or

(2) Accuse anyone of a criminal offense; or

(3) Take or withhold action as an official, or cause an official to take or withhold action.

(b) Criminal coercion is classified as a misdemeanor.

§ 11.407 Sexual assault.

(a) A person who has sexual contact with another person not his or her spouse, or causes such other person to have sexual contact with him or her, is guilty of sexual assualt as a misdemeanor, if:

(1) He or she knows that the conduct is offensive to the other person; or

(2) He or she knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature or his or her conduct; or

(3) He or she knows that the other person is unaware that a sexual act is being committed; or

(4) The other person is less than 10 years old; or

(5) He or she has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(6) The other person is less than 16 years old and the actor is at least four years older than the other person; or

(7) The other person is less than 21 years old and the actor is his or her guardian or otherwise responsible for general supervision of his or her welfare; or

(8) The other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him or her.

(b) Sexual contact is any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, or for the purpose of abusing, humiliating, harassing, or degrading the victim.

§ 11.408 Indecent exposure.

A person commits a misdemeanor if he or she exposes his or her genitals under circumstances in which he or she knows his or her conduct is likely to cause affront or alarm.

§ 11.409 Reckless burning or exploding.

A person commits a misdemeanor if he or she purposely starts a fire or causes an explosion, whether on his or her property or another's, and thereby recklessly:

(a) Places another person in danger of death or bodily injury; or

(b) Places a building or occupied structure of another in danger of damage or destruction.

§ 11.410 Criminal mischief.

(a) A person is guilty of criminal mischief if he or she:

(1) Damages tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means; or

(2) Purposely or recklessly tampers with tangible property of another so as to endanger person or property; or

(3) Purposely or recklessly causes another to suffer pecuniary loss by deception or threat.

(b) Criminal mischief is a misdemeanor if the actor purposely causes pecuniary loss in excess of $100, or a petty misdemeanor if he or she purposely or recklessly causes precuniary loss in excess of $25. Otherwise, criminal mischief is a violation.

§ 11.411 Criminal trespass.

(a) A person commits an offense if, knowing that he or she is not licensed or privileged to do so, he or she enters or surreptitiously remains in any building or occupied structure. An offense under this subsection is a misdemeanor if it is committed in a dwelling at night. Otherwise it is a petty misdemeanor.

(b) A person commits an offense if, knowing that he or she is not licensed or privileged to do so, he or she enters or remains in any place as to which notice against trespass is given by:

(1) Actual communication to the actor; or

(2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(3) Fencing or other enclosure manifestly designed to exclude intruders.

(c) An offense under this section constitutes a petty misdemeanor if the offender defies an order to leave personally communicated to him or her by the owner of the premises or other authorized person. Otherwise it is a violation.

§ 11.412 Theft.

A person who, without permission of the owner, shall take, shoplift, possess or exercise unlawful control over movable property not his or her own or under his or her control with the purpose to deprive the owner thereof or who unlawfully transfers immovable property of another or any interest therein with the purpose to benefit himself or herself or another not entitled thereto shall be guilty of theft, a misdemeanor.

§ 11.413 Receiving stolen property.

A person is guilty of receiving stolen property, a misdemeanor, if he or she purposely receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with purpose to restore it to the owner. *Receiving* means acquiring possession, control or title, or lending on the security of the property.

§ 11.414 Embezzlement.

A person who shall, having lawful custody of property not his or her own, appropriate the same to his or her own use, with intent to deprive the owner thereof, shall be guilty of embezzlement, a misdemeanor.

§ 11.415 Fraud.

A person who shall by willful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measures obtain any money or other property, shall be guilty of fraud, a misdemeanor.

§ 11.416 Forgery.

(a) A person is guilty of forgery, a misdemeanor, if, with purpose to defraud or injure anyone, or with knowledge that he or she is facilitating fraud or injury to be perpetrated by anyone, he or she:

(1) Alters, makes, completes, authenticates, issues or transfers any writing of another without his or her authority; or

(2) Utters any writing which he or she knows to be forged in a manner above specified.

(b) ''Writing'' includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

§ 11.417 Extortion.

A person who shall willfully, by making false charges against another person or by any other means whatsoever, extort or attempt to extort any moneys, goods, property, or anything else of any value, shall be guilty of extortion, a misdemeanor.

§ 11.418 Misbranding.

A person who shall knowingly and willfully misbrand or alter any brand or mark on any livestock of another person, shall be guilty of a misdemeanor.

§ 11.419 Unauthorized use of automobiles and other vehicles.

A person commits a misdemeanor if he or she operates another person's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner. It is an affirmative defense to prosecution under this section that the actor reasonably believed that the owner would have consented to the operation had he or she known of it.

§ 11.420 Tampering with records.

A person commits a misdemeanor if, knowing that he or she has no privilege to do so, he or she falsifies, destroys, removes or conceals any writing or record, with purpose to deceive or injure anyone or to conceal any wrongdoing.

§ 11.421 Bad checks.

(a) A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits a misdemeanor.

(b) For the purposes of this section, an issuer is presumed to know that the check or order would not be paid, if:

(1) The issuer had no account with the drawee at the time the check or order was issued; or

(2) Payment was refused by the drawee for lack of funds, upon presentation within 30 days after issue, and the issuer failed to make good within 10 days after receiving notice of that refusal.

§ 11.422 Unauthorized use of credit cards.

(a) A person commits a misdemeanor if he or she uses a credit card for the purpose of obtaining property or services with knowledge that:

(1) The card is stolen or forged; or

(2) The card has been revoked or cancelled; or

(3) For any other reason his or her use of the card is unauthorized by the issuer.

(b) *Credit card* means a writing or other evidence of an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

§ 11.423 Defrauding secured creditors.

A person commits a misdemeanor if he or she destroys, conceals, encumbers, transfers or otherwise deals with property subject to a security interest with purpose to hinder that interest.

§ 11.424 Neglect of children.

(a) A parent, guardian, or other person supervising the welfare of a child under 18 commits a misdemeanor if he or she knowingly endangers the child's welfare by violating a duty of care, protection or support.

(b) A parent, guardian, or other person supervising the welfare of a child under 18 commits a violation if he or she neglects or refuses to send the child to school.

§ 11.425 Persistent non-support.

A person commits a misdemeanor if he or she persistently fails to provide support which he or she can provide and which he or she knows he or she is legally obliged to provide to a spouse, child or other dependent.

§ 11.426 Bribery.

(a) A person is guilty of bribery, a misdemeanor, if he or she offers, confers or agrees to confer upon another,

or solicits, accepts or agrees to accept from another:

(1) Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(2) Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(3) Any benefit as consideration for a violation of a known legal duty as a public servant or party official.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he or she had not yet assumed office, or lacked jurisdiction, or for any other reason.

§11.427 Threats and other improper influence in official and political matters.

(a) A person commits a misdemeanor if he or she:

(1) Threatens unlawful harm to any person with purpose to influence his or her decision, vote or other exercise of discretion as a public servant, party official or voter; or

(2) Threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(3) Threatens harm to any public servant with purpose to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding; or

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he or she had not yet assumed office, or lacked jurisdiction, or for any other reason.

§11.428 Retaliation for past official action.

A person commits a misdemeanor if he or she harms another by any unlawful act in retaliation for anything lawfully done by the latter in the capacity of public servant.

§11.429 Perjury.

A person is guilty of perjury, a misdemeanor, if in any official proceeding he or she makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he or she does not believe it to be true.

(a) No person shall be guilty of an offense under this section if he or she retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(b) No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.

§11.430 False alarms.

A person who knowingly causes a false alarm of fire or other emergency to be transmitted to, or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property commits a misdemeanor.

§11.431 False reports.

(a) A person who knowingly gives false information to any law enforcement officer with the purpose to implicate another commits a misdemeanor.

(b) A person commits a petty misdemeanor if he or she:

(1) Reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(2) Pretends to furnish such authorities with information relating to an offense or incident when he or she knows he or she has no information relating to such offense or incident.

§11.432 Impersonating a public servant.

A person commits a misdemeanor if he or she falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or

otherwise to act in reliance upon that pretense to his or her prejudice.

§ 11.433 Disobedience to lawful order of court.

A person who willfully disobeys any order, subpoena, summons, warrant or command duly issued, made or given by any Court of Indian Offenses or any officer thereof is guilty of a misdemeanor.

§ 11.434 Resisting arrest.

A person commits a misdemeanor if, for the purpose of preventing a public servant from effecting a lawful arrest or discharging any other duty, he or she creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

§ 11.435 Obstructing justice.

A person commits a misdemeanor if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for a crime, he or she harbors or conceals the other, provides a weapon, transportation, disguise or other means of escape, warns the other of impending discovery, or volunteers false information to a law enforcement officer.

§ 11.436 Escape.

A person is guilty of the offense of escape, a misdemeanor, if he or she unlawfully removes himself or herself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period.

§ 11.437 Bail jumping.

A person set at liberty by court order, with or without bail, upon condition that he or she will subsequently appear at a specified time or place, commits a misdemeanor if, without lawful excuse, he or she fails to appear at that time and place.

§ 11.438 Flight to avoid prosecution or judicial process.

A person who shall absent himself or herself from the Indian country over which the Court of Indian Offenses exercises jurisdiction for the purpose of avoiding arrest, prosecution or other judicial process shall be guilty of a misdemeanor.

§ 11.439 Witness tampering.

(a) A person commits a misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he or she attempts to induce or otherwise cause a witness or informant to:

(1) Testify or inform falsely; or

(2) Withhold any testimony, information, document or thing; or

(3) Elude legal process summoning him or her to supply evidence; or

(4) Absent himself or herself from any proceeding or investigation to which he or she has been legally summoned.

(b) A person commits a misdemeanor if he or she harms another by any unlawful act in retaliation for anything lawfully done in the capacity of witness or informant.

§ 11.440 Tampering with or fabricating physical evidence.

A person commits a misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he or she:

(a) Alters, destroys, conceals, or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) Makes, presents or uses any record, document or thing knowing it to be false and with the purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

§ 11.441 Disorderly conduct.

(a) A person is guilty of disorderly conduct if, with purpose to cause public inconvenience, annoyance or alarm or recklessly creating a risk thereof, he or she:

(1) Engages in fighting or threatening, or in violent or tumultuous behavior;

(2) Makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or

(3) Creates a hazardous or physically offensive condition by any act which

serves no legitimate purpose of the actor.

(b) *Public* means affecting or likely to affect persons in a place to which the public has access; among the places included are highways, schools, prisons, apartments, places of business or amusement, or any neighborhood.

(c) An offense under this section is a petty misdemeanor if the actor's purpose is to cause substantial harm or serious inconvenience, or if he or she persists in disorderly conduct after reasonable warning or request to desist. Otherwise, disorderly conduct is a violation.

§ 11.442 Riot; failure to disperse.

(a) A person is guilty of riot, a misdemeanor, if he or she participates with two or more others in a course of disorderly conduct:

(1) With purpose to commit or facilitate the commission of a felony or misdemeanor; or

(2) With purpose to prevent or coerce official action; or

(3) When the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon.

(b) Where three or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, a law enforcement officer may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a misdemeanor.

§ 11.443 Harassment.

A person commits a petty misdemeanor if, with purpose to harass another, he or she:

(a) Makes a telephone call without purpose or legitimate communication; or

(b) Insults, taunts or challenges another in a manner likely to provoke violent or disorderly response; or

(c) Makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language; or

(d) Subjects another to an offensive touching; or

(e) Engages in any other course of alarming conduct serving no legitimate purpose.

§ 11.444 Carrying concealed weapons.

A person who goes about in public places armed with a dangerous weapon concealed upon his or her person is guilty of a misdemeanor unless he or she has a permit to do so signed by a magistrate of the Court of Indian Offenses.

§ 11.445 Driving violations.

(a) A person who shall operate any vehicle in a manner dangerous to the public safety is guilty of reckless driving, a petty misdemeanor, unless it is committed while under the influence of alcohol, in which case it is a misdemeanor.

(b) A person who shall drive, operate or be in physical control of any motor vehicle when his or her alcohol concentration is 0.10 or more shall be guilty of driving while intoxicated, a misdemeanor.

(c) Any person who drives, operates, or is in physical control of a motor vehicle within the Indian country under the jurisdiction of a Court of Indian Offenses consents to a chemical test of his or her blood, breath, or urine for the purpose of determining the presence of alcohol, to be administered at the direction of a law enforcement officer. The test may be required when the officer has reasonable cause to believe that a person is driving while intoxicated, and the person has either been lawfully placed under arrest for a violation of this section, or has been involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death.

(d) In the absence of an applicable tribal traffic code, the provisions of state traffic laws applicable in the state where a Court of Indian Offenses is located shall apply to the operation of motor vehicles within the Indian country under the jurisdiction of the Court of Indian Offenses with the exception that any person found guilty of violating such laws shall, in lieu of the penalties provided under state law, be sentenced according to the standards found in § 11.450 depending on the nature of the traffic code violation, and

may be deprived of the right to operate any motor vehicle for a period not to exceed 6 months.

§ 11.446 Cruelty to animals.

A person commits a misdemeanor if he or she purposely or recklessly:

(a) Subjects any animal in his or her custody to cruel neglect; or

(b) Subjects any animal to cruel mistreatment; or

(c) Kills or injures any animal belonging to another without legal privilege or consent of the owner.

(d) Causes one animal to fight with another.

§ 11.447 Maintaining a public nuisance.

A person who permits his or her property to fall into such condition as to injure or endanger the safety, health, comfort, or property of his or her neighbors, is guilty of a violation.

§ 11.448 Abuse of office.

A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor if, knowing that his or her conduct is illegal, he or she:

(a) Subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

(b) Denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

§ 11.449 Violation of an approved tribal ordinance.

A person who violates the terms of any tribal ordinance duly enacted by the governing body of the tribe occupying the Indian country under the jurisdiction of the Court of Indian Offenses and approved by the Assistant Secretary—Indian Affairs or his or her designee, is guilty of an offense and upon conviction thereof shall be sentenced as provided in the ordinance.

§ 11.450 Maximum fines and sentences of imprisonment.

(a) A person convicted of an offense under this code may be sentenced as follows:

(1) If the offense is a misdemeanor, to a term of imprisonment not to exceed six months or to a fine not to exceed $500.00, or both;

(2) If the offense is a petty misdemeanor, to a term of imprisonment not to exceed three months or to a fine not to exceed $250.00, or both;

(3) If the offense is a violation, to a term of imprisonment not to exceed one month or to a fine not to exceed $100.00, or both;

(b) The fines listed above may be imposed in addition to any amounts ordered paid as restitution.

Subpart E—Civil Actions

§ 11.500 Law applicable to civil actions.

(a) In all civil cases the Court of Indian Offenses shall apply any laws of the United States that may be applicable, any authorized regulations of the Interior Department, and any ordinances or customs of the tribe occupying the area of Indian country over which the court has jurisdiction, not prohibited by Federal laws.

(b) Where any doubt arises as to the customs and usages of the tribe the court may request the advice of counselors familiar with these customs and usages.

(c) Any matters that are not covered by the traditional customs and usages of the tribe, or by applicable Federal laws and regulations, shall be decided by the Court of Indian Offenses according to the law of the State in which the matter in dispute lies.

§ 11.501 Judgments in civil actions.

(a) In all civil cases, judgment shall consist of an order of the court awarding damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party, including injunctive relief and declaratory judgments.

(b) Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he or she has suffered.

(c) Where the injury was deliberately inflicted, the judgment shall impose an

additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the tribe.

(d) Where the injury was inflicted as a result of accident, or where both the complainant and the defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he or she has suffered.

(e) No judgment shall be given on any suit unless the defendant has actually received notice of such suit and ample opportunity to appear in court in his or her defense.

§ 11.502 Costs in civil actions.

(a) The court may assess the accruing costs of the case against the party or parties against whom judgment is given. Such costs shall consist of the expenses of voluntary witnesses for which either party may be responsible and the fees of jurors in those cases where a jury trial is had, and any further incidental expenses connected with the procedure before the court as the court may direct.

(b) In all civil suits the complainant may be required to deposit with the clerk of the court a fee or other security in a reasonable amount to cover costs and disbursements in the case.

§ 11.503 Applicable civil procedure.

The procedure to be followed in civil cases shall be the Federal Rules of Civil Procedure applicable to United States district courts, except insofar as such procedures are superseded by order of the Court of Indian Offenses or by the existence of inconsistent tribal rules of procedure.

§ 11.504 Applicable rules of evidence.

Courts of Indian Offenses shall be bound by the Federal Rules of Evidence, except insofar as such rules are superseded by order of the Court of Indian Offenses, or by the existence of inconsistent tribal rules of evidence.

Subpart F—Domestic Relations

§ 11.600 Marriages.

(a) A magistrate of the Court of Indian Offenses shall have the authority to perform marriages.

(b) A valid marriage shall be constituted by:

(1) The issuance of a marriage license by the Court of Indian Offenses and by execution of a consent to marriage by both parties to the marriage and recorded with the clerk of the court; or

(2) The recording of a tribal custom marriage with the Court of Indian Offenses within 30 days of the tribal custom marriage ceremony by the signing by both parties of a marriage register maintained by the clerk of the court.

(c) A marriage license application shall include the following information:

(1) Name, sex, occupation, address, social security number, and date and place of birth of each party to the proposed marriage;

(2) If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) Name and address of the parents or guardian of each party;

(4) Whether the parties are related to each other and, if so, their relationship; and

(5) The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(6) A certificate of the results of any medical examination required by either applicable tribal ordinances, or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located.

§ 11.601 Marriage licenses.

A marriage license shall be issued by the clerk of the court in the absence of any showing that the proposed marriage would be invalid under any provision of this part or tribal custom, and upon written application of an unmarried male and unmarried female, both of whom must be eighteen (18) years or older. If either party to the marriage is under the age of eighteen (18), that party must have the written consent of parent or his or her legal guardian.

§ 11.602 Solemnization.

(a) In the event a judge, clergyman, tribal official or anyone authorized to do so solemnizes a marriage, he or she shall file with the clerk of the court certification thereof within thirty (30) days of the solemnization.

(b) Upon receipt of the marriage certificate, the clerk of the court shall register the marriage.

§ 11.603 Invalid or prohibited marriages.

(a) The following marriages are prohibited:

(1) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(2) A marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood;

(3) A marriage between an aunt and a nephew or between an uncle and a niece, whether the relationship is by the half or the whole blood, except as to marriages permitted by established tribal custom;

(4) A marriage prohibited by custom and usage of the tribe.

(b) Children born of a prohibited marriage are legitimate.

§ 11.604 Declaration of invalidity.

(a) The Court of Indian Offenses shall enter a decree declaring the invalidity of a marriage entered into under the following circumstances:

(1) A party lacked capacity to consent to the marriage, either because of mental incapacity or infirmity or by the influence of alcohol, drugs, or other incapacitating substances; or

(2) A party was induced to enter into a marriage by fraud or duress; or

(3) A party lacks the physical capacity to consummate the marriage by sexual intercourse and at the time the marriage was entered into, the other party did not know of the incapacity; or

(4) The marriage is prohibited under § 11.603.

(b) A declaration of invalidity may be sought by either party to the marriage or by the legal representative of the party who lacked capacity to consent.

§ 11.605 Dissolution.

(a) The Court of Indian Offenses shall enter a decree of dissolution of marriage if:

(1) The court finds that the marriage is irretrievably broken, if the finding is supported by evidence that (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding, or (ii) there is serious marital discord adversely affecting the attitude of one or both of the parties towards the marriage;

(2) The court finds that either party, at the time the action was commenced, was domiciled within the Indian country under the jurisdiction of the court, and that the domicile has been maintained for 90 days next preceding the making of the findings; and

(3) To the extent it has jurisdiction to do so, the court has considered, approved, or provided for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property; or has provided for a separate later hearing to complete these matters.

(b) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the Court of Indian Offenses shall grant the decree in that form unless the other party objects.

§ 11.606 Dissolution proceedings.

(a) Either or both parties to the marriage may initiate dissolution proceedings.

(b) If a proceeding is commenced by one of the parties, the other party shall be served in the manner provided by the applicable rule of civil procedure and within thirty days after the date of service may file a verified response.

(c) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(1) The age, occupation, and length of residence within the Indian country under the jurisdiction of the court of each party;

(2) The date of the marriage and the place at which it was registered;

(3) That jurisdictional requirements are met and that the marriage is

irretrievably broken in that either (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding or (ii) there is a serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;

(4) The names, age, and addresses of all living children of the marriage and whether the wife is pregnant;

(5) Any arrangement as to support, custody, and visitation of the children and maintenance of a spouse; and

(6) The relief sought.

§ 11.607 Temporary orders and temporary injunctions.

(a) In a proceeding for dissolution of marriage or for legal separation, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(b) As a part of a motion for temporary maintenance or support or by an independent motion accompanied by an affidavit, either party may request the Court of Indian Offenses to issue a temporary injunction for any of the following relief:

(1) Restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(2) Enjoining a party from molesting or disturbing the peace of the other party or of any child;

(3) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(4) Enjoining a party from removing a child from the jurisdiction of the court; and

(5) Providing other injunctive relief proper in the circumstances.

(c) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(d) A response may be filed within 20 days after service of notice of a motion or at the time specified in the temporary restraining order.

(e) On the basis of the showing made, the Court of Indian Offenses may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper under the circumstances.

(f) A temporary order or temporary injunction:

(1) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in a proceeding;

(2) May be revoked or modified before the final decree as deemed necessary by the court;

(3) Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

§ 11.608 Final decree; disposition of property; maintenance; child support; custody.

(a) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal.

(b) The Court of Indian Offenses shall have the power to impose judgment as follows in dissolution or separation proceedings:

(1) Apportion or assign between the parties the non-trust property and non-trust assets belonging to either or both and whenever acquired, and whether the title thereto is in the name of the husband or wife or both;

(2) Grant a maintenance order for either spouse in amounts and for periods of time the court deems just;

(3) Order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his or her support, without regard to marital misconduct, after considering all relevant factors. In addition:

(i) When a support order is issued by a Court of Indian Offenses, the order

may provide that a portion of an absent parent's wages be withheld to comply with the order on the earliest of the following dates: When an amount equal to one month's support becomes overdue; when the absent parent requests withholding; or at such time as the Court of Indian Offenses selects. The amount to be withheld may include an amount to be applied toward liquidation of any overdue support.

(ii) If the Court of Indian Offenses finds that an absent parent who has been ordered to pay child support is now residing within the jurisdiction of another Court of Indian Offenses, an Indian tribal court, or a state court, it shall petition such court for reciprocal enforcement and provide it with a copy of the support order.

(iii) If the Court of Indian Offenses receives a petition from another Court of Indian Offenses, an Indian tribal court or a state court, it shall take necessary steps to determine paternity, establish an order for child support, register a foreign child support order or enforce orders as requested in the petition.

(iv) The Court of Indian Offenses shall assist a state in the enforcement and collection of past-due support from Federal tax refunds of absent parents living within the Indian country over which the court has jurisdiction.

(v) Any person or agency who has provided support or assistance to a child under 18 years of age shall be a proper person to bring an action under this section and to recover judgment in an amount equal to such past-paid support or assistance, including costs of bringing the action.

(4) Make child custody determinations in accordance with the best interest of the child.

(5) Restore the maiden name of the wife.

§ 11.609 Determination of paternity and support.

The Court of Indian Offenses shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the Court of Indian Offenses or by the Department of the Interior.

§ 11.610 Appointment of guardians.

The court shall have the jurisdiction to appoint or remove legal guardians for minors and for persons who are incapable of managing their own affairs under terms and conditions to be prescribed by the court.

§ 11.611 Change of name.

The Court of Indian Offenses shall have the authority to change the name of any person upon petition of such person or upon the petition of the parents of any minor, if at least one parent is Indian. Any order issued by the court for a change of name shall be kept as a permanent record and copies shall be filed with the agency superintendent, the governing body of the tribe occupying the Indian country under the jurisdiction of the court, and any appropriate agency of the State in which the court is located.

Subpart G—Probate Proceedings

§ 11.700 Probate jurisdiction.

The Court of Indian Offenses shall have jurisdiction to administer in probate the estate of a deceased Indian who, at the time of his or her death, was domiciled or owned real or personal property situated within the Indian country under the jurisdiction of the court to the extent that such estate consists of property which does not come within the jurisdiction of the Secretary of the Interior.

§ 11.701 Duty to present will for probate.

Any custodian of a will shall deliver the same to the Court of Indian Offenses within 30 days after receipt of information that the maker thereof is deceased. Any custodian who fails to do so shall be liable for damages sustained by any person injured thereby.

§ 11.702 Proving and admitting will.

(a) Upon initiating the probate of an estate, the will of the decedent shall be filed with the court. Such will may be proven and admitted to probate by filing an affidavit of an attesting witness

which identifies such will as being the will which the decedent executed and declared to be his or her last will. If the evidence of none of the attesting witnesses is available, the court may allow proof of the will by testimony that the signature of the testator is genuine.

(b) At any time within 90 days after a will has been admitted to probate, any person having an interest in the decedent's estate may contest the validity of such will. In the event of such contest, a hearing shall be held to determine the validity of such will.

(c) Upon considering all relevant information concerning the will, the Court of Indian Offenses shall enter an order affirming the admission of such will to probate, or rejecting such will and ordering that the probate of the decedent's estate proceed as if the decedent had died intestate.

§ 11.703 Petition and order to probate estate.

(a) Any person having an interest in the administration of an estate which is subject to the jurisdiction of the court may file a written petition with the court requesting that such estate be administered in probate.

(b) The Court of Indian Offenses shall enter an order directing that the estate be probated upon finding that the decedent was an Indian who, at the time of his or her death, was domiciled or owned real or personal property situated within the Indian country under the jurisdiction of the court other than trust or other restricted property, that the decedent left an estate subject to the jurisdiction of the court, and that it is necessary to probate such estate.

§ 11.704 Appointment and duties of executor or administrator.

(a) Upon ordering the estate to be probated, the court shall appoint an administrator to administer the estate of the decedent. The person nominated by the decedent's will, if any, to be the executor of the estate shall be so appointed, provided such person is willing to serve in such capacity.

(b) The executor or administrator appointed by the court shall have the following duties and powers during the administration of the estate and until discharged by the court:

(1) To send by certified mail true copies of the order to probate the estate and the will of the decedent admitted to probate by such order, if any, to each heir, devisee and legatee of the decedent, at their last known address, to the governing body of the tribe or tribes occupying the Indian country over which the court has jurisdiction, and to the agency superintendent;

(2) To preserve and protect the decedent's property within the estate and the heirs, so far as is possible;

(3) To investigate promptly all claims against the decedent's estate and determine their validity;

(4) To cause a written inventory of all the decedent's property within the estate to be prepared promptly with each article or item being separately set forth and cause such property to be exhibited to and appraised by an appraiser, and the inventory and appraisal thereof to be filed with the court;

(5) To give promptly all persons entitled thereto such notice as is required under these proceedings;

(6) To account for all property within the estate which may come into his or her possession or control, and to maintain accurate records of all income received and disbursements made during the course of the administration.

§ 11.705 Removal of executor or administrator.

The Court of Indian Offenses may order the executor or administrator to show cause why he or she should not be discharged, and may discharge the executor or administrator for failure, neglect or improper performance of his or her duties.

§ 11.706 Appointment and duties of appraiser.

(a) Upon ordering an estate to be probated, the court shall appoint a disinterested and competent person as an appraiser to appraise all of the decedent's real and personal property within the estate.

(b) It shall be the duty of the appraiser to appraise separately the true cash value of each article or item of property within the estate, including

debts due the decedent, and to indicate the appraised value of each such article or item of property set forth in the inventory of the estate and to certify such appraisal by subscribing his or her name to the inventory and appraisal.

§ 11.707 Claims against estate.

(a) Creditors of the estate or those having a claim against the decedent shall file their claim with the clerk of the court or with the executor or administrator within 60 days from official notice of the appointment of the executor or administrator published locally in the press or posting of signs at the tribal and agency offices, giving appropriate notice for the filing of claims.

(b) The executor or administrator shall examine all claims within 90 days of his or her appointment and notify the claimant whether his or her claim is accepted or rejected. If the claimant is notified of rejection, he or she may request a hearing before the court by filing a petition requesting such hearing within 30 days following the notice of rejection.

§ 11.708 Sale of property.

After filing the inventory and appraisal, the executor or administrator may petition the court for authority to sell personal property of the estate for purposes of paying the expenses of last illness and burial expenses, expenses of administration, claims, if any, against the estate, and for the purpose of distribution. If, in the court's judgment, such sale is in the best interest of the estate, the court shall order such sale and prescribe the terms upon which the property shall be sold.

§ 11.709 Final account.

(a) When the affairs of an estate have been fully administered, the executor or administrator shall file a final account with the court, verified by his or her oath. Such final account shall affirmatively set forth:

(1) That all claims against the estate have been paid, except as shown, and that the estate has adequate unexpended and unappropriated funds to fully pay such remaining claims;

(2) The amount of money received and expended by him or her, from whom received and to whom paid, referring to the vouchers for each of such payments;

(3) That there is nothing further to be done in the administration of the estate except as shown in the final account;

(4) The remaining assets of the estate, including unexpended and unappropriated money, at the time of filing the final account;

(5) The proposed determination of heirs and indicate the names, ages, addresses and relationship to the decedent of each distributee and the proposed distributive share and value thereof each heir, devisee or legatee is to receive; and

(6) A petition that the court set a date for conducting a hearing to approve the final account, to determine the heirs, devisees and legatees of the decedent and the distributive share each distributee is to receive.

§ 11.710 Determination of the court.

At the time set for hearing upon the final account, the Court of Indian Offenses shall proceed to examine all evidence relating to the distribution of the decedent's estate, and consider objections to the final account which may have been filed by any heir, devisee, legatee, or other person having an interest in the distribution of the estate. Upon conclusion of the hearing, the court shall enter an order:

(a) Providing for payment of approved claims;

(b) Determining the decedent's heirs, devisees and legatees, indicating the names, ages and addresses of each, and the distributive share of the remaining estate which each distributee is to receive; and

(c) Directing the administrator or executor to distribute such distributive share to those entitled thereto.

§ 11.711 Descent and distribution.

(a) The court shall distribute the estate according to the terms of the will of the decedent which has been admitted to probate.

(b) If the decedent died intestate or having left a will which has been rejected by the court, the estate shall be distributed as follows:

(1) According to the laws and customs of the tribe if such laws and customs are proved; or

(2) According to state law absent the existence of tribal laws or customs.

(c) If no person takes under the above subsections, the estate shall escheat to the tribe.

§ 11.712 Closing estate.

(a) Upon finding that the estate has been fully administered and is in a condition to be closed, the court shall enter an order closing the estate and discharging the executor or administrator.

(b) If an order closing the estate has not been entered by the end of nine months following appointment of executor or administrator, the executor or administrator shall file a written report with the court stating the reasons why the estate has not been closed.

§ 11.713 Small estates.

An estate having an appraised value which does not exceed $2,000.00 and which is to be inherited by a surviving spouse and/or minor children of the deceased may, upon petition of the executor or administrator, and a hearing before the court, be distributed without administration to those entitled thereto, upon which the estate shall be closed.

Subpart H—Appellate Proceedings

§ 11.800 Jurisdiction of appellate division.

The jurisdiction of the appellate division shall extend to all appeals from final orders and judgments of the trial division, by any party except the prosecution in a criminal case where there has been a jury verdict. The appellate division shall review all issues of law presented to it which arose in the case, but shall not reverse the trial division decision unless the legal error committed affected a substantial right of a party or the outcome of the case.

§ 11.801 Procedure on appeal.

(a) An appeal must be taken within 15 days from the judgment appealed from by filing a written notice of appeal with the clerk of the court.

(b) The notice of appeal shall specify the party or parties taking the appeal, shall designate the judgment, or part thereof appealed from, and shall contain a short statement of reasons for the appeal. The clerk of the court shall mail a copy of the notice of appeal to all parties other than parties taking the appeal.

(c) In civil cases, other parties shall have 15 days to respond to the notice of appeal.

(d) In civil cases, the appellant may request the trial division to stay the judgment pending action on the notice of appeal, and, if the appeal is allowed, either party may request the trial division to grant or stay an injunction pending appeal. The trial division may condition a stay or injunction pending appeal on the depositing of cash or bond sufficient to cover damages awarded by the court together with interest.

§ 11.802 Judgment against surety.

Any surety to a bond submits himself or herself to the jurisdiction of the Court of Indian Offenses, and irrevocably appoints the clerk of the court as his or her agent upon whom any papers affecting his or her liability on the bond may be served.

§ 11.803 Record on appeal.

Within 20 days after a notice of appeal is filed, the clerk of court shall certify and file with the appellate division the record of the case.

§ 11.804 Briefs and memoranda.

(a) Within 30 days after the notice of appeal is filed, the appellant may file a written brief in support of his or her appeal. An original and one copy for each appellee shall be filed with the clerk of court who shall mail one copy by registered or certified mail to each appellee.

(b) The appellee shall have 30 days after receipt of the appellant's brief within which to file an answer brief. An original and one copy for each appellant shall be filed with the clerk of the court who shall mail one copy, by registered or certified mail, to each appellant.

§ 11.805 Oral argument.

The appellate division shall assign all criminal cases for oral argument. The court may in its discretion assign civil cases for oral argument or may dispose of civil cases on the briefs without argument.

§ 11.806 Rules of court.

The chief magistrate of the appellate division shall prescribe all necessary rules concerning the operation of the appellate division and the time and place of meeting of the court.

Subpart I—Children's Court

§ 11.900 Definitions.

For purposes of sections pertaining to the children's court:

(a) *Abandon* means the leaving of a minor without communication or failing to support a minor for a period of one year or more with no indication of the parents' willingness to assume a parental role.

(b) *Adult* means a person eighteen (18) years or older.

(c) *Counsel* means an attorney admitted to the bar of a state or the District of Columbia or a lay advocate admitted to practice before the Court of Indian Offenses.

(d) *Custodian* means one who has physical custody of a minor and who is providing food, shelter and supervision to the minor.

(e) *Custody* means the power to control the day-to-day activities of the minor.

(f) *Delinquent act* means an act which, if committed by an adult, would be designated a crime under this part or under an ordinance of the tribe.

(g) *Detention* means the placement of a minor in a physically restrictive facility.

(h) *Guardian* means a person other than the minor's parent who is by law responsible for the care of the minor.

(i) *Guardian ad Litem* means a person appointed by the court to represent the minor's interests before the court.

(j) *Juvenile offender* means a person who commits a delinquent act prior to his or her eighteenth birthday.

(k) *Minor* means:

(1) A person under 18 years of age,

(2) A person 18 years of age or older concerning whom proceedings are commenced in the children's court prior to his or her eighteenth birthday, or

(3) A person 18 years of age or older who is under the continuing jurisdiction of the children's court.

(l) *Minor-in-need-of-care* means a minor who:

(1) Has no parent or guardian available and willing to take care of him or her;

(2) Is unwilling to allow his or her parent or guardian to take care of him or her;

(3) Has suffered or is likely to suffer a physical or emotional injury, inflicted by other than accidental means, which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions or emotional health;

(4) Has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his or her parent, guardian or custodian;

(5) Has been sexually abused;

(6) Has been committing delinquent acts as a result of parental pressure, guidance or approval; or,

(7) Has been committing status offenses.

(m) *Status offense* means an offense which, if committed by an adult, would not be designated a crime under this part or under an ordinance of the tribe.

§ 11.901 The children's court established.

When conducting proceedings under §§ 11.900–11.1114 of this part, the Court of Indian Offenses shall be known as the ''Children's Court''.

§ 11.902 Non-criminal proceedings.

No adjudication upon the status of any minor in the jurisdiction of the children's court shall be deemed criminal or be deemed a conviction of a crime, unless the children's court refers the matter to the Court of Indian Offenses. Neither the disposition nor evidence given before the children's court shall be admissible as evidence against the child in any proceeding in another court.

§11.903 Presenting officer.

(a) The agency superintendent and the chief magistrate of the children's court shall jointly appoint a presenting officer to carry out the duties and responsibilities set forth under §§11.900–11.1114 of this part. The presenting officer's qualifications shall be the same as the qualifications for the official who acts as prosecutor for the Court of Indian Offenses. The presenting officer may be the same person who acts as prosecutor in the Court of Indian Offenses.

(b) The presenting officer shall represent the tribe in all proceedings under §§11.900–11.1114 of this part.

§11.904 Guardian ad litem.

The children's court, under any proceeding authorized by this part, shall appoint, for the purposes of the proceeding, a guardian ad litem for a minor, where the court finds that the minor does not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship, or where the parent, guardian, or custodian has been accused of abusing or neglecting the minor.

§11.905 Jurisdiction.

The children's court has exclusive, original jurisdiction of the following proceedings:

(a) Proceedings in which a minor who resides in a community for which the court is established is alleged to be a juvenile offender, unless the children's court transfers jurisdiction to the Court of Indian Offenses pursuant to §11.907 of this part.

(b) Proceedings in which a minor who resides in a community for which the court is established is alleged to be a minor-in-need-of-care.

§11.906 Rights of parties.

(a) In all hearings and proceedings under §§11.900–11.1114 of this part the following rights will be observed unless modified by the particular section describing a hearing or proceeding:

(1) Notice of the hearing or proceeding shall be given the minor, his or her parents, guardian or custodian and their counsel. The notice shall be delivered by certified mail. The notice shall contain:

(i) The name of the court;

(ii) The title of the proceeding; and

(iii) The date, time and place of the proceeding.

(b) The children's court magistrate shall inform the minor and his or her parents, guardian or custodian of their right to retain counsel, and, in juvenile delinquency proceedings, shall tell them: ''You have a right to have a lawyer or other person represent you at this proceeding. If you cannot afford to hire counsel, the court will appoint counsel for you.''

(c) If the children's court magistrate believes there is a potential conflict of interest between the minor and his or her parents, guardian, or custodian with respect to legal representation, the court shall appoint another person to act as counsel for the minor.

(d) The minor need not be a witness against, nor otherwise incriminate, himself or herself.

(e) The children's court shall give the minor, and the minor's parent, guardian or custodian the opportunity to introduce evidence, to be heard on their own behalf and to examine witnesses.

§11.907 Transfer to Court of Indian Offenses.

(a) The presenting officer or the minor may file a petition requesting the children's court to transfer the minor to the Court of Indian Offenses if the minor is 14 years of age or older and is alleged to have committed an act that would have been considered a crime if committed by an adult.

(b) The children's court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to the Court of Indian Offenses.

(1) The transfer hearing shall be held no more than 30 days after the petition is filed.

(2) Written notice of the transfer hearing shall be given to the minor and the minor's parents, guardian or custodian at least 72 hours prior to the hearing.

(c) All the rights listed in §11.906 shall be afforded the parties at the transfer hearing.

(d) The following factors shall be considered when determining whether to

transfer jurisdiction of the minor to the Court of Indian Offenses:

(1) The nature and seriousness of the offense with which the minor is charged.

(2) The nature and condition of the minor, as evidenced by his or her age; mental and physical condition; past record of offenses; and responses to past children's court efforts at rehabilitation.

(e) The children's court may transfer jurisdiction of the minor to the Court of Indian Offenses if the children's court finds clear and convincing evidence that both of the following circumstances exist:

(1) There are no reasonable prospects for rehabilitating the minor through resources available to the children's court; and

(2) The offense allegedly committed by the minor evidences a pattern of conduct which constitutes a substantial danger to the public.

(f) When a minor is transferred to the Court of Indian Offenses, the children's court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.

§ 11.908 Court records.

(a) A record of all hearings under §§ 11.900–11.1114 of this part shall be made and preserved.

(b) All children's court records shall be confidential and shall not be open to inspection to anyone but the minor, the minor's parents or guardian, the presenting officer, or others by order of the children's court.

§ 11.909 Law enforcement records.

(a) Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults.

(b) All law enforcement records and files shall be confidential and shall not be open to inspection to anyone but the minor, the minor's parents or guardian, the presenting officer, or others by order of the children's court.

§ 11.910 Expungement.

When a minor who has been the subject of any proceeding before the children's court attains his or her twenty-first birthday, the children's court magistrate shall order the court records and the law enforcement records pertaining to the minor to be destroyed, except for adoption records which shall not be destroyed under any circumstances.

§ 11.911 Appeal.

(a) For purposes of appeal, a record of the proceedings shall be made available to the minor and parents, guardian or custodian. Costs of obtaining the record shall be paid by the party seeking the appeal.

(b) Any party to a children's court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the children's court within 30 days of the final order of disposition.

(c) No decree or disposition of a hearing shall be stayed by such appeal.

(d) All appeals shall be conducted in accordance with this part.

§ 11.912 Contempt of court.

Any willful disobedience or interference with any order of the children's court constitutes contempt of court which may be punished in accordance with this part.

Subpart J—Juvenile Offender Procedure

§ 11.1000 Complaint.

A complaint must be filed by a law enforcement officer or by the presenting officer and sworn to by a person who has knowledge of the facts alleged. The complaint shall be signed by the complaining witness, and shall contain:

(a) A citation to the specific section(s) of this part which gives the children's court jurisdiction of the proceedings;

(b) A citation to the section(s) of this part which the minor is alleged to have violated;

(c) The name, age, and address of the minor who is the subject of the complaint, if known; and

(d) A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

§ 11.1001 Warrant.

The children's court may issue a warrant directing that a minor be taken into custody if the court finds there is probable cause to believe the minor committed the delinquent act alleged in the complaint.

§ 11.1002 Custody.

A minor may be taken into custody by a law enforcement officer if:

(a) The officer observes the minor committing a delinquent act; or

(b) The officer has reasonable grounds to believe a delinquent act has been committed that would be a crime if committed by an adult, and that the minor has committed the delinquent act; or

(c) A warrant pursuant to § 11.1001 has been issued for the minor.

§ 11.1003 Law enforcement officer's duties.

A law enforcement officer who takes a minor into custody pursuant to § 11.1002 of this part shall:

(a) Give the following warnings to any minor taken into custody prior to any questioning:

(1) The minor has a right to remain silent;

(2) Anything the minor says can be used against the minor in court;

(3) The minor has the right to the presence of counsel during questioning; and

(4) If he or she cannot afford counsel, the court will appoint one.

(b) Release the minor to the minor's parent, guardian, or custodian and issue a verbal advice or warning as may be appropriate, unless shelter care or detention is necessary.

(c) If the minor is not released, make immediate and recurring efforts to notify the minor's parents, guardian, or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care or detention is made by the court.

§ 11.1004 Detention and shelter care.

(a) A minor alleged to be a juvenile offender may be detained, pending a court hearing, in the following places:

(1) A foster care facility approved by the tribe;

(2) A detention home approved by the tribe; or

(3) A private family home approved by the tribe.

(b) A minor who is 16 years of age or older may be detained in a jail facility used for the detention of adults only if:

(1) A facility in paragraph (a) of this section is not available or would not assure adequate supervision of the minor;

(2) The minor is housed in a separate room from the detained adults; and

(3) Routine inspection of the room where the minor is housed is conducted every 30 minutes to assure his or her safety and welfare.

§ 11.1005 Preliminary inquiry.

(a) If a minor is placed in detention or shelter care, the children's court shall conduct a preliminary inquiry within 24 hours for the purpose of determining:

(1) Whether probable cause exist to believe the minor committed the alleged delinquent act; and

(2) Whether continued detention or shelter care is necessary pending further proceedings.

(b) If a minor has been released to the parents, guardian or custodian, the children's court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act.

(c) If the minor's parents, guardian or custodian is not present at the preliminary inquiry, the children's court shall determine what efforts have been made to notify and to obtain the presence of the parents, guardian, or custodian. If it appears that further efforts are likely to produce the parents, guardian or custodian, the children's court shall recess for no more than 24 hours and direct that continued efforts be made to obtain the presence of parents, guardian or custodian.

(d) All the rights listed in § 11.906 shall be afforded the parties in a preliminary inquiry.

(e) The children's court shall hear testimony concerning:

(1) The circumstances that gave rise to the complaint or the taking of the minor into custody; and

(2) The need for detention or shelter care.

(f) If the children's court finds that probable cause exists to believe the minor performed the delinquent act, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing unless:

(1) The act is serious enough to warrant continued detention or shelter care;

(2) There is reasonable cause to believe the minor will run away and be unavailable for further proceedings; or

(3) There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

(g) The children's court may release a minor pursuant to paragraph (f) of this section to a relative or other responsible adult tribal member if the parent, guardian, or custodian of the minor consents to the release. If the minor is ten years of age or older, the minor and the parents, guardian or custodian must both consent to the release.

(h) Upon a finding that probable cause exists to believe that the minor has committed the alleged delinquent act and that there is need for detention or shelter care, the minor's detention or shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

§ 11.1006 Investigation by the presenting officer.

(a) The presenting officer shall make an investigation following the preliminary inquiry or the release of the minor to his or her parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may:

(1) Determine that no further action be taken;

(2) Begin transfer proceedings to the Court of Indian Offenses pursuant to § 11.907 of this part; or

(3) File a petition pursuant to § 11.1007 of this part to initiate further proceedings. The petition shall be filed within 48 hours of the preliminary inquiry if the minor is in detention or shelter care. If the minor has been previously released to his or her parents, guardian or custodian, relative or responsible adult, the petition shall be filed within ten days of the preliminary inquiry.

§ 11.1007 Petition.

(a) Proceedings under §§ 11.1000–11.1014 of this part shall be instituted by a petition filed by the presenting officer on behalf of the tribe and in the interests of the minor. The petition shall state:

(1) The name, birth date, and residence of the minor;

(2) The names and residences of the minor's parents, guardian or custodian;

(3) A citation to the specific section(s) of this part which gives the children's court jurisdiction of the proceedings;

(4) A citation to the section(s) of this part which the minor is alleged to have violated; and

(5) If the minor is in detention or shelter care, the time the minor was taken into custody.

§ 11.1008 Date of hearing.

Upon receipt of the petition, the children's court shall set a date for the hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. If the adjudicatory hearing is not held within 15 days after filing of the petition, the petition shall be dismissed and cannot be filed again, unless;

(a) The hearing is continued upon motion of the minor; or

(b) The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

§ 11.1009 Summons.

(a) At least five working days prior to the adjudicatory hearing, the children's court shall issue summons to:

(1) The minor;

(2) The minor's parents, guardian or custodian; and

(3) Any person the children's court or the minor believes necessary for the adjudication of the hearing.

(b) The summons shall contain the name of the court, the title of the proceedings, and the date, time and place of the hearing.

(c) A copy of the petition shall be attached to the summons.

(d) The summons shall be delivered personally by a law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by certified mail.

§ 11.1010 Adjudicatory hearing.

(a) The children's court shall conduct the adjudicatory hearing for the sole purpose of determining the guilt or innocence of the minor. The hearing shall be private and closed.

(b) All the rights listed in § 11.906 shall be afforded the parties at the adjudicatory hearing. The notice requirements of § 11.906(a) are met by a summons issued pursuant to § 11.1009.

(c) If the minor admits the allegations of the petition, the children's court shall proceed to the dispositional stage only if the children's court finds that:

(1) The minor fully understands his or her rights as set forth in § 11.906 of this part and fully understands the potential consequences of admitting the allegations;

(2) The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for children's court action; and

(3) The minor has not, in the purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

(d) The children's court shall hear testimony concerning the circumstances which gave rise to the complaint.

(e) If the allegations of the petition are sustained by proof beyond a reasonable doubt, the children's court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.

(f) A finding that a minor is a juvenile offender constitutes a final order for purposes of appeal.

§ 11.1011 Dispositional hearing.

(a) A dispositional hearing shall take place not more than 15 days after the adjudicatory hearing.

(b) At the dispositional hearing, the children's court shall hear evidence on the question of proper disposition.

(c) All the rights listed in § 11.906 shall be afforded the parties in the dispositional hearing.

(d) At the dispositional hearing, the children's court shall consider any predisposition report, physician's report or social study it may have ordered and afford the parents an opportunity to controvert the factual contents and conclusions of the reports. The children's court shall also consider the alternative predisposition report prepared by the minor and his or her attorney, if any.

(e) The dispositional order constitutes a final order for purposes of appeal.

§ 11.1012 Dispositional alternatives.

(a) If a minor has been adjudged a juvenile offender, the children's court may make the following disposition:

(1) Place the minor on probation subject to conditions set by the children's court;

(2) Place the minor in an agency or institution designated by the children's court; or

(3) Order restitution to the aggrieved party.

(b) The dispositional orders are to be in effect for the time limit set by the children's court, but no order may continue after the minor reaches 18 years of age, unless the dispositional order was made within six months of the minor's eighteenth birthday or after the minor had reached 18 years of age, in which case the disposition may not continue for more than six months.

(c) The dispositional order is to be reviewed at the children's court discretion, but at least once every six months.

§ 11.1013 Modification of dispositional order.

(a) A dispositional order of the children's court may be modified upon a showing of a change of circumstances.

(b) The children's court may modify a dispositional order at any time upon the motion of the minor or the minor's parents, guardian or custodian.

(c) If the modification involves a change of custody, the children's court shall conduct a hearing pursuant to paragraph (d) of this section.

(d) A hearing to review a dispositional order shall be conducted as follows:

(1) All the rights listed in § 11.906 shall be afforded the parties in the hearing to review the dispositional order. The notice required by paragraph (a) of § 11.906 shall be given at least 48 hours before the hearing.

(2) The children's court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.

(3) In determining modification of disposition, the procedures prescribed in § 11.1011 of this part shall apply.

(4) If the request for review of disposition is based upon an alleged violation of a court order, the children's court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

§ 11.1014 Medical examination.

The children's court may order a medical examination for a minor who is alleged to be a juvenile offender.

Subpart K—Minor-in-Need-of-Care Procedure

§ 11.1100 Complaint.

A complaint must be filed by a law enforcement officer or by the presenting officer and sworn to by a person who has knowledge of the facts alleged. The complaint shall be signed by the complaining witness and shall contain:

(a) A citation to the specific section of this part which gives the children's court jurisdiction of the proceedings;

(b) The name, age and address of the minor who is the subject of the complaint, if known; and

(c) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.

§ 11.1101 Warrant.

The children's court may issue a warrant, directing that a minor be taken into custody if the children's court finds there is probable cause to believe the minor is a minor-in-need-of-care.

§ 11.1102 Custody.

A minor may be taken into custody by a law enforcement officer if:

(a) The officer has reasonable grounds to believe that the minor is a minor-in-need-of-care and that the minor is in immediate danger from his or her surroundings and that removal is necessary; or

(b) A warrant pursuant to § 11.1101 of this part has been issued for the minor.

§ 11.1103 Law enforcement officer's duties.

Upon taking a minor into custody the officer shall:

(a) Release the minor to the minor's parents, guardian or custodian and issue a verbal advice or warning as may be appropriate, unless shelter care is necessary.

(b) If the minor is not released, make immediate and recurring efforts to notify the minor's parents, guardian or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care is made by the children's court.

§ 11.1104 Shelter care.

(a) A minor alleged to be a minor-in-need-of-care may be detained, pending a court hearing, in the following places:

(1) A foster care facility authorized under tribal or state law to provide foster care, group care or protective residence;

(2) A private family home approved by the tribe; or

(3) A shelter care facility operated by a licensed child welfare services agency and approved by the tribe.

(b) A minor alleged to be a minor-in-need-of care may not be detained in a jail or other facility used for the detention of adults. If such minor is detained in a facility used for the detention of juvenile offenders, he or she must be detained in a room separate from juvenile offenders, and routine inspection of the room where the minor is detained must be conducted every 30 minutes to assure his or her safety and welfare.

§ 11.1105 Preliminary inquiry.

(a) If a minor is placed in shelter care, the children's court shall conduct a preliminary inquiry with 24 hours for the purpose of determining:

(1) Whether probable cause exists to believe the minor is a minor-in-need-of care; and

(2) Whether continued shelter care is necessary pending further proceedings.

(b) If a minor has been released to the parents, guardian or custodian, the children's court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor is a minor-in-need-of-care.

(c) If the minor's parents, guardian or custodian is not present at the preliminary inquiry, the children's court shall determine what efforts have been made to notify and obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the children's court shall recess for no more than 24 hours and direct that continued efforts be made to obtain the presence of the parents, guardian or custodian.

(d) All the rights listed in § 11.906 of this part shall be afforded the parties in the minor-in-need-of care preliminary inquiry except that the court is not required to appoint counsel if the parties cannot afford one. Notice of the inquiry shall be given to the minor, and his or her parents, guardian or custodian and their counsel as soon as the time for the inquiry has been established.

(e) The children's court shall hear testimony concerning:

(1) The circumstances that gave rise to the complaint or the taking of the minor into custody; and

(2) The need for shelter care.

(f) If the children's court finds that probable cause exists to believe the minor is a minor-in-need-of-care, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing, unless:

(1) There is reasonable cause to believe that the minor will run away and be unavailable for further proceedings;

(2) There is reasonable cause to believe that the minor is in immediate danger from parents, guardian or custodian and that removal from them is necessary; or

(3) There is a reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

(g) The children's court may release the minor pursuant to paragraph (f) of this section to a relative or other responsible adult tribal member if the parents, guardian or custodian of the minor consent to the release. If the minor is ten years to age or older, the minor and the parents, guardian or custodian must both consent to the release.

(h) Upon finding that probable cause exists to believe that the minor is a minor-in-need-of-care and that there is a need for shelter care, the minor's shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

§ 11.1106 Investigation by the presenting officer.

The presenting officer shall make an investigation following the preliminary inquiry or the release of the minor to the parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may:

(a) Determine that no further action be taken; or

(b) File a petition pursuant to § 11.1107 of this part in the children's court to initiate further proceedings. The petition shall be filed within 48 hours of the preliminary inquiry if the

minor is in shelter care. If the minor has been previously released to the parents, guardian or custodian, relative or responsible adult, the petition shall be filed within ten days of the preliminary inquiry.

§ 11.1107 Petition.

Proceedings under §§ 11.1100–11.1114 of this part shall be instituted by a petition filed by the presenting officer on behalf of the tribe and the interests of the minor. The petition shall state:

(a) The name, birth date, and residence of the minor;

(b) The names and residences of the minor's parents, guardian or custodian;

(c) A citation to the specific section of this part which gives the children's court jurisdiction of the proceedings; and

(d) If the minor is in shelter care, the place of shelter care and the time he or she was taken into custody.

§ 11.1108 Date of hearing.

Upon receipt of the minor-in-need-of-care petition, the children's court shall set a date for the hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. If the adjudicatory hearing is not held within 15 days after the filing of the petition, it shall be dismissed unless;

(a) The hearing is continued upon motion of the minor; or

(b) The hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

§ 11.1109 Summons.

(a) At least five working days prior to the adjudicatory hearing for a minor-in-need-of-care, the children's court shall issue summons to:

(1) The minor;

(2) The minor's parents, guardian or custodian; and

(3) Any person the children's court or the minor believes necessary for the proper adjudication of the hearing.

(b) The summons shall contain the name of the court; the title of the proceedings, and the date, time and place of the hearing.

(c) A copy of the petition shall be attached to the summons.

(d) The summons shall be delivered personally by a tribal law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by certified mail.

§ 11.1110 Minor-in-need-of-care adjudicatory hearing.

(a) The children's court shall conduct the adjudicatory hearing for the sole purpose of determining whether the minor is a minor-in-need-of-care. The hearing shall be private and closed.

(b) All the rights listed in § 11.906 of this part shall be afforded the parties in the adjudicatory hearing, except that the court may not appoint counsel if the parties cannot afford one. The notice requirements of § 11.906(a) are met by a summons issued pursuant to § 11.1109.

(c) The children's court shall hear testimony concerning the circumstances which gave rise to the complaint.

(d) If the circumstances of the petition are sustained by clear and convincing evidence, the children's court shall find the minor to be a minor-in-need-of-care and proceed to the dispositional hearing.

(e) A finding that a minor is a minor-in-need-of-care constitutes a final order for purposes of appeal.

§ 11.1111 Minor-in-need-of-care dispositional hearing.

(a) No later than 15 days after the adjudicatory hearing, a dispositional hearing shall take place to hear evidence on the question of proper disposition.

(b) All the rights listed in § 11.906 of this part shall be afforded the parties in the dispositional hearing except the right to free court-appointed counsel. Notice of the hearing shall be given to the parties at least 48 hours before the hearing.

(c) At the dispositional hearing the children's court shall consider any predisposition report or other study it

may have ordered and afford the parties an opportunity to controvert the factual contents and conclusions of the reports. The children's court shall also consider the alternative predisposition report prepared by the minor and his or her attorney, if any.

(d) The dispositional order constitutes a final order for purposes of appeal.

§ 11.1112 Dispositional alternatives.

(a) If a minor has been adjudged a minor-in-need-of-care, the children's court may:

(1) Permit the minor to remain with his or her parents, guardian or custodian subject to such limitations and conditions as the court may prescribe; or, if reasonable efforts to have the minor return or remain in his or her own home are unsuccessful, the children's court may make whichever of the following dispositions is in the best interest of the minor;

(2) Place the minor with a relative within the boundaries of the reservation subject to such limitations and conditions as the court may prescribe;

(3) Place the minor in a foster home within the boundaries of the reservation which has been approved by the tribe subject to such limitations and conditions as the court may prescribe;

(4) Place the minor in shelter care facilities designated by the court;

(5) Place the minor in a foster home or a relative's home outside the boundaries of the reservation subject to such limitations and conditions as the court may prescribe; or

(6) Recommend that termination proceedings begin.

(b) Whenever a minor is placed in a home or facility located outside the boundaries of the reservation, the court may require the party receiving custody of the minor to sign an agreement that the minor will be returned to the court upon order of the court.

(c) The dispositional orders are to be in effect for the time limit set by the children's court, but no order may continue after the minor reaches 18 years of age, unless the dispositional order was made within six months of the minor's eighteenth birthday, in which case the disposition may not continue for more than six months.

(d) The dispositional orders are to be reviewed at the children's court discretion, but at least once every six months to determine the continuing need for and appropriateness of placement, to determine the extent of progress made, and to assess the probability of the minor's return to his or her home.

(e) A permanency planning hearing must be held within 18 months after the original placement and every six months thereafter to determine the future status of the minor except when the minor is returned to his or her home and court supervision ceases.

§ 11.1113 Modification of dispositional order.

(a) A dispositional order of the children's court may be modified upon a showing of a change of circumstances.

(b) The children's court may modify a dispositional order at any time upon motion of the minor or the minor's parents, guardian or custodian.

(c) If the modification involves a change of custody, the children's court shall conduct a hearing pursuant to paragraph (d) of this section to review the dispositional order.

(d) A hearing to review a dispositional order shall be conducted as follows:

(1) All the rights listed in § 11.906 of this part shall be afforded the parties in the review of the disposition hearing except the right to free court-appointed counsel. Notice of the hearing shall be given the parties at least 48 hours before the hearing.

(2) The children's court shall review the performance of the minor, the minor's parents, guardian or custodian, and other persons providing assistance to the minor and the minor's family.

(3) In determining modification of disposition, the procedures prescribed in § 11.1111 of this part shall apply.

(4) If the request for review of disposition is based upon an alleged violation of a court order, the children's court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

§ 11.1114 Termination.

(a) Parental rights to a child may be terminated by the children's court according to the procedures in this section.

(b) Proceedings to terminate parental rights shall be instituted by a petition filed by the presenting officer on behalf of the tribe or by the parents or guardian of the child. The petition shall state:

(1) The name, birth date, and residence of the minor;

(2) The names and residences of the minor's parents, guardian or custodian;

(3) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody; and

(4) The reasons for the petition.

(c) Upon receipt of the petition, the children's court shall set a date for the termination hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. The hearing may be continued:

(1) On motion of the minor's parents, guardian or custodian; or

(2) Upon motion of the presenting officer by reason of the unavailability of material evidence or witnesses and the children's court finds the presenting officer has exercised due diligence to obtain the material evidence or witnesses and reasonable grounds exist to believe that the material evidence or witnesses will become available.

(d) Summons:

(1) At least five working days prior to the termination hearing, the children's court shall issue summons to the minor, the minor's parents, guardian or custodian, and any other person the court or the minor's parents, guardian or custodian believes necessary for the proper adjudication of the hearing.

(2) The summons shall contain the name of the court, the title of the proceedings, and the date, time and place of the hearing.

(3) A copy of the petition shall be attached to the summons.

(4) The summons shall be delivered personally by a law enforcement officer or appointee of the children's court. If the summons cannot be delivered personally, the court may deliver it by certified mail.

(e) The children's court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed.

(1) All the rights listed in § 11.906 shall be afforded the parties in the termination hearing except the right to a free court-appointed counsel. The minor's parents may not be compelled to be witnesses against, nor otherwise incriminate themselves.

(2) The children's court shall hear testimony concerning the circumstances that gave rise to the petition, and the need for termination of parental rights.

(3) The children's court may terminate parental rights if, following efforts to prevent or eliminate the need to remove the minor, it finds such efforts to have been unsuccessful, and it finds beyond a reasonable doubt that:

(i) The child has been abandoned;

(ii) The minor has suffered physical injuries, willfully and repeatedly inflicted by his or her parent(s) which cause or create a substantial risk of death, disfigurement, or impairment of bodily functions;

(iii) The parent(s) has subjected the minor to willful and repeated acts of sexual abuse;

(iv) The minor has suffered serious emotional or mental harm due to the act of the parent(s); or

(v) The voluntary written consent of both parents has been acknowledged before the court.

(f) Dispositional alternatives:

(1) If parental rights to a child are terminated, the children's court shall place the minor in a foster care or shelter care facility which has been approved by the tribe, and follow the adoption procedures of the tribe, or, in their absence, the adoption procedures of the state within which it is located.

(2) If parental rights to a child are not terminated, the children's court shall make a disposition according to § 11.1112 of this part.

(g) The termination order constitutes a final order for purposes of appeal.

(h) No adjudication of termination of parental rights shall affect the minor's enrollment status as a member of any tribe or the minor's degree of blood quantum of any tribe.

§11.1115 Information collection.

(a) The information collection requirements contained in §11.600 and §11.606 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned approval number 1076–0094. The information is being collected to obtain a marriage license (§11.600) and a divorce decree (§11.606) from the Courts of Indian Offenses, and will be used by the courts to issue a marriage license or divorce decree. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average .25 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 336–SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076–0094], Office of Management and Budget, Washington, DC 20502.

PART 12—THE INDIAN POLICE

Sec.
12.100 Superintendent in command.
12.101 Police commissioners.
12.102 Police training.
12.103 Minimum standards for police programs.
12.104 Minimum standards for detention programs.
12.105 Return of equipment.

AUTHORITY: 25 U.S.C. 2, 13.

SOURCE: 22 FR 10515, Dec. 24, 1957. Redesignated at 58 FR 54411, Oct. 21, 1993.

§12.100 Superintendent in command.

The superintendent of each Indian reservation shall be recognized as commander of the Indian police force and will be held responsible for the general efficiency and conduct of the members thereof. It shall be the duty of the superintendent, or his duly qualified representative, to keep himself informed as to the efficiency of the Indian police in the discharge of their duties, to subject them to a regular inspection, to inform them as to their duties and keep a strict accounting of the equipment issued them in connection with their official duties. It shall be the duty of the superintendent to detail such Indian policemen as may be necessary to carry out the orders of the Court of Indian Offenses and to preserve order during the court sessions. The superintendent shall investigate all reports and charges of misconduct on the part of Indian policemen and shall exercise such proper disciplinary measures as may be consistent with existing regulations. No superintendent of any Indian reservation shall assign or detail any member of the Indian police force for duty as janitor or chauffeur or for any duty not connected with the administration of law and order.

§12.101 Police commissioners.

The superintendent of any Indian reservation may, with the approval of the Commissioner of Indian Affairs, designate as police commissioner any qualified person. Wherever any special or deputy special officer is regularly employed in any Indian jurisdiction, he shall be police commissioner for that jurisdiction. Such police commissioner shall obey the orders of the superintendent of the reservation where employed and shall see that the orders of the Court of Indian Offenses are properly carried out. The police commissioner shall be responsible to the superintendent for the conduct and efficiency of the Indian police under his direction and shall give such instruction and advice to them as may be necessary. The police commissioner shall also report to the superintendent all violations of law or regulation and any misconduct of any member of the Indian police.

§12.102 Police training.

It shall be the duty of the superintendent to maintain from time to time as circumstances require and permit classes of instruction for the Indian policemen. Such classes shall familiarize the policemen with the manner of making searches and arrests, the proper and humane handling of prisoners, the keeping of records of offenses and police activities, and with court orders and legal forms and the

duties of the police in relation thereto, and other subjects of importance for efficient police duty. It shall further be the purpose of the classes to consider methods of preventing crime and of securing cooperation with Indian communities in establishing better social relations.

§ 12.103 Minimum standards for police programs.

The following minimum standards are required of all law enforcement programs that receive funding from the Bureau of Indian Affairs:

(a) Each law enforcement officer shall be specifically identified as such and shall be individually authorized to make arrests and carry firearms. Only employees assigned duties as law enforcement officers and qualified under paragraph (e) of this section may be authorized to carry firearms or make arrests.

(b) Uniforms, when worn, shall positively identify the wearer as a law enforcement officer. Badge, name plate and tribal or Bureau of Indian Affairs patch shall be visible at all times. Uniforms of all enforcement personnel shall be plainly distinguishable from the uniforms of any non-enforcement personnel working on the reservation. Each officer shall be issued a standard identification card bearing a photograph of the officer.

(c) A firearm may be discharged only when in the considered judgment of the officer there is imminent danger of loss of life or serious bodily injury to the officer or to another person. The weapon may be fired only for the purpose of rendering the person at whom it is fired incapable of continuing the activity prompting the officer to shoot. The firing of warning shots is prohibited. This policy does not apply to the use of firearms to participate in official marksmanship training or to kill a dangerous or seriously injured animal.

(d) Except in firearms training, each time a firearm is used for law enforcement purposes a report shall be filed with the superior of the officer who used the weapon. Whenever use of a weapon results in serious injury or death of any person, the officer firing the weapon shall be placed on administrative leave, or be assigned to strictly administrative duties pending a thorough investigation of all circumstances surrounding the incident.

(e) Each law enforcement officer must have attained a score of 70 percent or better on an approved firearms qualification course within the previous six months to be qualified to carry a firearm. Whenever an officer's firearms qualification lapses, the officer shall return all weapons issued. The following courses are approved firearms qualification courses:

(1) The National Rifle Association National Police Course.

(2) The National Rifle Association 25-Yard Course.

(3) The National Rifle Association Practical Pistol Course.

(4) The Federal Bureau of Investigation Practical Pistol Course.

(f)(1) Law enforcement officers shall be issued the standard police .38 caliber revolver and ammunition. The use of other types of hand guns such as automatics, parabellums, or calibers other than the authorized .38 caliber is prohibited. The barrel length may be not more than 6 inches nor less than 4 inches for uniformed personnel, and not less than 2 inches for plainclothes personnel. Only standard load ammunition may be used. Bureau of Indian Affairs officers who carried a .357 Magnum revolver while performing law enforcement functions for the Bureau of Indian Affairs before July 17, 1972, may be authorized to carry a .357 Magnum revolver. The Commissioner of Indian Affairs may grant a written waiver to permit Bureau of Indian Affairs officers to carry hand guns not authorized by this paragraph.

(2) Each tribe shall specify the type of firearms, ammunition and auxiliary equipment to be used by the law enforcement officers of that tribe.

(g)(1) Newly employed patrol officers shall successfully complete within their first year of service the approved Basic Police Training Course conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy and approved by the Commissioner of Indian Affairs. An officer who fails to complete the training required by this

paragraph shall be discharged or transferred to a position not involving law enforcement duties. Transfer may result in demotion.

(2) Prior to, or within one year after, promotion or appointment to a supervisory enforcement position, an employee shall complete the approved Supervisory Enforcement Officer Training Course conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy and approved by the Commissioner of Indian Affairs. An officer who is serving in a supervisory position and fails to complete the training required in this paragraph shall be transferred to a nonsupervisory position. Transfer may result in demotion.

(3) Prior to, or within one year after, promotion or appointment to a criminal-investigator position, an officer shall successfully complete the Criminal-Investigator Training Course conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy and approved by the Commissioner of Indian Affairs. An officer who is serving in a criminal-investigator position and fails to complete the training required in this paragraph shall be transferred to a noncriminal-investigator position. Transfer may result in demotion.

(4) Prior to, or within one year after, promotion or appointment to a supervisory criminal-investigator position, an officer shall successfully complete the Executive Management Course of Training conducted at the Indian Police Academy or a similar course substantially meeting or exceeding the level of training provided by the Indian Police Academy approved by the Commissioner of Indian Affairs. An Officer who is serving in a supervisory criminal-investigator position and fails to complete the training required in this paragraph shall be transferred to a nonsupervisory criminal-investigator position. Transfer may result in demotion.

(h) Each law enforcement officer shall receive a minimum of forty hours of local in-service training annually to meet training needs determined by the tribe and to keep abreast with developments in the field of law enforcement.

(i) The Civil Service Commission accepted Bureau of Indian Affairs standards for skill level GS–083 are the minimum entry level qualifications for a patrol officer. The Civil Service Commission standards for skill level GS–1811 are the minimum entry level qualifications for criminal investigators. The standards are available for inspection or copying at any Bureau, Agency, Area, or Central Personnel Office.

(j) Salaries paid law enforcement officers by a tribal organization under a contract under part 271 of this chapter or by a tribal governing body under a grant under part 272 of this chapter shall be equal to or greater than the salaries paid officers with similar responsibilities employed directly by the Bureau of Indian Affairs.

(k) Prior to taking an adverse action against any employee, the contractor under part 271 of this chapter or grantee under part 272 of this chapter shall take the following steps:

(1) Notify the employee of the contemplated action and give a full specification of the reasons such action is contemplated.

(2) Provide the employee with a written statement of any specific violation of rules, regulations, or statutes the contractor or grantee alleges the employee has committed and the names of all persons upon whose testimony these allegations are based.

(3) Set a hearing date not less than 15 days after the employee has been given the written statement of allegation.

(4) Provide the employee and the employee's counsel at the hearing with an opportunity to confront and cross-examine each adverse witness.

(5) Provide the employee and the employee's counsel at the hearing with an opportunity to delineate issues, to present factual contentions in an orderly manner and to generally protect the employee's interest.

(6) Reconsider the decision to take the adverse action based solely on the evidence given at the hearing and provide the employee at the time the decision is announced with a written statement of the reasons for the decision

and the evidence relied upon in reaching the decision.

(7) Issue a final order based on the decision reached after the hearing.

(l) After October 1, 1977, the tribe shall require each law enforcement officer it employs to adhere to a law enforcement code of conduct prescribed by the tribe. The code shall establish specific rules concerning conflicts of interest, employee conduct both on and off duty, impartiality and thoroughness in performance of duty, and acceptance of gifts or favors.

(m) A contractor under part 271 of this chapter shall use the same report forms and submit the same statistical reports to the Central Office that are required of Bureau of Indian Affairs police programs.

(n)(1) When a law enforcement officer receives an oral or written allegation that a law enforcement officer employed by a program funded by the Bureau of Indian Affairs has violated the civil rights of any person, the officer receiving the allegation shall prepare a written report of the allegation and transmit it through the chain of command to the chief law enforcement officer within seven days of receipt of the allegation.

(2) Not later than seven days after being notified of the allegation, the chief law enforcement officer shall take the following actions:

(i) Notify the Federal Bureau of Investigation, the agency superintendent or contracting officer's representative, and the tribal council. The notice to the Federal Bureau of Investigation shall state whether an investigation is being conducted to determine whether tribal law was violated and shall cite any relevant provisions of the tribal code.

(ii) If the officer against whom the allegation is made is an employee of the Bureau of Indian Affairs, prepare a memorandum to the superintendent, who shall, through the area director and the Assistant Secretary—Indian Affairs, transmit to the Director, Office of Audit and Investigation, a request that the allegation be investigated to determine whether any administrative action is warranted. The memorandum shall be transmitted through the superintendent and the area director. The tribal council shall receive a copy of any such memorandum.

(iii) If the officer against whom the allegation is made is an employee of a tribal contractor, notify both the top Bureau of Indian Affairs law enforcement officer assigned to the agency and the tribal council. If there is no Bureau of Indian Affairs law enforcement officer at the agency, the superintendent and the area special officer shall be notified.

(3) If the chief law enforcement officer is accused of a civil rights violation, the report of the allegation shall be transmitted directly to the agency superintendent, who shall take the actions required by paragraph (n)(2) of this section. If there is no agency superintendent, the report of the allegation shall be transmitted directly to the area director, who shall take the actions required by paragraph (n)(2) of this section.

(4) As soon as all actions required by paragraphs (n) (1), (2), and (3) of this section have been completed, a copy of all documents concerning the allegation shall be transmitted to the Chief, Division of Law Enforcement Services, in the Central Office.

(5 U.S.C. 301, 25 U.S.C. 2, 450m)

[41 FR 47234, Oct. 28, 1976; 41 FR 51012, Nov. 19, 1976, as amended at 42 FR 46518, Sept. 16, 1977; 43 FR 16973, Apr. 12, 1978]

§ 12.104 Minimum standards for detention programs.

Each detention program that receives funds from the Bureau of Indian Affairs shall meet the following minimum standards:

(a) No sick or injured person may be booked or held in a detention facility unless a medical release has been obtained from a medical officer.

(b) Any inmate requiring medical attention shall be treated as soon as possible.

(c) The jailor or other responsible employee shall maintain control over the custody and issue of all medicine to prisoners under treatment for chronic ailments to insure proper use and to guard against overdose.

(d) Routine inspections of all cells shall be conducted every thirty (30)

minutes to protect the safety and welfare of prisoners. A record of each inspection shall be logged in appropriate records.

(e) Only persons who have been specifically authorized by the jailor to visit a prisoner or prisoners may be allowed in the cell block areas.

(f) Special attention shall be given to cells occupied by persons jailed for intoxication to guard against the infliction of personal injury.

(g) No juvenile may be kept in the same cell with any adult.

(h) Each prisoner shall be served three nutritionally adequate meals a day.

(i) Each foodhandler shall be given a medical examination and, if training in foodhandling is available locally from the Indian Health Service, shall complete the foodhandler training offered by the Indian Health Service prior to employment.

(j) All jail facilities including kitchens shall be subject to periodic inspections by personnel from the Indian Health Service or other appropriate agency to insure proper sanitary conditions.

(k) The number of persons in each cell may not exceed the number for which the cell was designed.

(l) A record of all visitors shall be maintained indicating date, time and identity of each visitor.

(m) Proper precautions shall be taken to insure the safekeeping of property belonging to inmates.

(n) Prior to, or within six months after, promotion or appointment to a position involving detention/jail duties, an employee shall successfully complete a Detention/Jail Operations and Management Training Course approved by the Commissioner of Indian Affairs. An employee who is serving in a position involving detention/jail duties and fails to complete the training required by this paragraph shall be transferred to a position not involving detention/jail or law enforcement duties or discharged. Transfer may result in demotion.

(5 U.S.C. 301, 25 U.S.C. 2, 450k)

[41 FR 47235, Oct. 28, 1976, as amended at 42 FR 46518, Sept. 16, 1977]

§ 12.105 Return of equipment.

Upon the resignation, death or discharge of any member of the Indian police all articles or property issued him in connection with his official duties must be returned to the superintendent or his representative.

PART 13—TRIBAL REASSUMPTION OF JURISDICTION OVER CHILD CUSTODY PROCEEDINGS

Subpart A—Purpose

Sec.
13.1 Purpose.
13.2 Information collection.

Subpart B—Reassumption

13.11 Contents of reassumption petitions.
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13.14 Secretarial review procedure.
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13.16 Technical assistance after disapproval.

AUTHORITY: 25 U.S.C. 1952.

SOURCE: 44 FR 45095, July 31, 1979, unless otherwise noted.

Subpart A—Purpose

§ 13.1 Purpose.

(a) The regulations of this part establish the procedures by which an Indian tribe that occupies a reservation as defined in 25 U.S.C. 1903(10) over which a state asserts any jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588) Pub. L. 83–280, or pursuant to any other federal law (including any special federal law applicable only to a tribe or tribes in Oklahoma), may reassume jurisdiction over Indian child custody proceedings as authorized by the Indian Child Welfare Act, Pub. L. 95–608, 92 Stat. 3069, 25 U.S.C. 1918.

(b) On some reservations there are disputes concerning whether certain federal statutes have subjected Indian child custody proceedings to state jurisdiction or whether any such jurisdiction conferred on a state is exclusive of tribal jurisdiction. Tribes located on those reservations may wish to exercise exclusive jurisdiction or other jurisdiction currently exercised by the

state without the necessity of engaging in protracted litigation. The procedures in this part also permit such tribes to secure unquestioned exclusive, concurrent or partial jurisdiction over Indian child custody matters without relinquishing their claim that no Federal statute had ever deprived them of that jurisdiction.

(c) Some tribes may wish to join together in a consortium to establish a single entity that will exercise jurisdiction over all their members located on the reservations of tribes participating in the consortium. These regulations also provide a procedure by which tribes may reassume jurisdiction through such a consortium.

(d) These regulations also provide for limited reassumptions including jurisdiction restricted to cases transferred from state courts under 25 U.S.C. 1911(b) and jurisdiction over limited geographical areas.

(e) Unless the petition for reassumption specifically states otherwise, where a tribe reassumes jurisdiction over the reservation it occupies, any land or community occupied by that tribe which subsequently acquires the status of reservation as defined in 25 U.S.C. 1903(10) also becomes subject to tribal jurisdiction over Indian child custody matters.

§ 13.2 Information collection.

The information collection requirement contained in § 13.11 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0112. The information is being collected when federally recognized tribes request reassumption of jurisdiction over child custody proceedings. The information will be used to determine if reassumption of jurisdiction over Indian child custody proceedings is feasible. Response is required to obtain a benefit.

[53 FR 21994, June 13, 1988]

Subpart B—Reassumption

§ 13.11 Contents of reassumption petitions.

(a) Each petition to reassume jurisdiction over Indian child custody proceedings and the accompanying plan shall contain, where available, the following information in sufficient detail to permit the Secretary to determine whether reassumption is feasible:

(1) Full name, address and telephone number of the petitioning tribe or tribes.

(2) A resolution by the tribal governing body supporting the petition and plan. If the territory involved is occupied by more than one tribe and jurisdiction is to be reassumed over all Indians residing in the territory, the governing body of each tribe involved must adopt such a resolution. A tribe that shares territory with another tribe or tribes may reassume jurisdiction only over its own members without obtaining the consent of the other tribe or tribes. Where a group of tribes form a consortium to reassume jurisdiction, the governing body of each participating tribe must submit a resolution.

(3) The proposed date on which jurisdiction would be reassumed.

(4) Estimated total number of members in the petitioning tribe or tribes, together with an explanation of how the number was estimated.

(5) Current criteria for membership in the tribe or tribes.

(6) Explanation of procedure by which a participant in an Indian child custody proceeding may determine whether a particular individual is a member of a petitioning tribe.

(7) Citation to provision in tribal constitution or similar governing document, if any, that authorizes the tribal governing body to exercise jurisdiction over Indian child custody matters.

(8) Description of the tribal court as defined in 25 U.S.C. 1903(12) that has been or will be established to exercise jurisdiction over Indian child custody matters. The description shall include an organization chart and budget for the court. The source and amount of non-tribal funds that will be used to fund the court shall be identified. Funds that will become available only when the tribe reassumes jurisdiction may be included.

(9) Copy of any tribal ordinances or tribal court rules establishing procedures or rules for the exercise of jurisdiction over child custody matters.

(10) Description of child and family support services that will be available to the tribe or tribes when jurisdiction reassumed. Such services include any resource to maintain family stability or provide support for an Indian child in the absence of a family—regardless of whether or not they are the type of services traditionally employed by social services agencies. The description shall include not only those resources of the tribe itself, but also any state or federal resources that will continue to be available after reassumption of jurisdiction.

(11) Estimate of the number of child custody cases expected during a year together with an explanation of how the number was estimated.

(12) Copy of any tribal agreements with states, other tribes or non-Indian local governments relating to child custody matters.

(b) If the petition is for jurisdiction other than transferral jurisdiction under 25 U.S.C. 1911(b), the following information shall also be included in the petition and plan:

(1) Citation of the statute or statutes upon which the state has based its assertion of jurisdiction over Indian child custody matters.

(2) Clear and definite description of the territory over which jurisdiction will be reassumed together with a statement of the size of the territory in square miles.

(3) If a statute upon which the state bases its assertion of jurisdiction is a surplus land statute, a clear and definite description of the reservation boundaries that will be reestablished for purposes of the Indian Child Welfare Act.

(4) Estimated total number of Indian children residing in the affected territory together with an explanation of how the number was estimated.

§13.12 Criteria for approval of reassumption petitions.

(a) The Assistant Secretary—Indian Affairs shall approve a tribal petition to reassume jurisdiction over Indian child custody matters if:

(1) Any reservation, as defined in 25 U.S.C. 1903(10), presently affected by the petition is presently occupied by the petitioning tribe or tribes;

(2) The constitution or other governing document, if any, of the petitioning tribe or tribes authorizes the tribal governing body or bodies to exercise jurisdiction over Indian child custody matters;

(3) The information and documents required by §13.11 of this part have been provided;

(4) A tribal court, as defined in 25 U.S.C. 1903(12), has been established or will be established before reassumption and that tribal court will be able to exercise jurisdiction over Indian child custody matters in a manner that meets the requirements of the Indian Civil Rights Act, 25 U.S.C. 1302;

(5) Child care services sufficient to meet the needs of most children the tribal court finds must be removed from parental custody are available or will be available at the time of reassumption of jurisdiction; and

(6) The tribe or tribes have established a procedure for clearly identifying persons who will be subject to the jurisdiction of the tribe or tribes upon reassumption of jurisdiction.

(b) If the technical assistance provided by the Bureau to the tribe to correct any deficiency which the Assistant Secretary—Indian Affairs has identified as a basis for disapproving a petition for reassumption of exclusive jurisdiction has proved unsuccessful in eliminating entirely such problem, the Bureau, at the request of the tribe, shall assist the tribe to assert whatever partial jurisdiction as provided in 25 U.S.C. 1918(b) that is feasible and desired by the tribe. In the alternative, the Bureau, if requested by the concerned tribe, shall assist the tribe to enter into agreements with a state or states regarding the care and custody of Indian children and jurisdiction over Indian child custody proceedings, including agreements which may provide for the orderly transfer of jurisdiction to the tribe on a case-by-case basis or agreements which provide for concurrent jurisdiction between the state and the Indian tribe.

§13.13 Technical assistance prior to petitioning.

(a) Upon the request of a tribe desiring to reassume jurisdiction over Indian child custody matters, Bureau

agency and Area Offices shall provide technical assistance and make available any pertinent documents, records, maps or reports in the Bureau's possession to enable the tribe to meet the requirements for Secretarial approval of the petition.

(b) Upon the request of such a tribe, to the extent funds are available, the Bureau may provide funding under the procedures established under 25 CFR 23.22 to assist the tribe in developing the tribal court and child care services that will be needed when jurisdiction is reassumed.

§ 13.14 Secretarial review procedure.

(a) Upon receipt of the petition, the Assistant Secretary—Indian Affairs shall cause to be published in the FEDERAL REGISTER a notice stating that the petition has been received and is under review and that it may be inspected and copied at the Bureau agency office that serves the petitioning tribe or tribes.

(1) No final action shall be taken until 45 days after the petition has been received.

(2) Notice that a petition has been disapproved shall be published in the FEDERAL REGISTER no later than 75 days after the petition has been received.

(3) Notice that a petition has been approved shall be published on a date requested by the petitioning tribe or within 75 days after the petition has been received—whichever is later.

(b) Notice of approval shall include a clear and definite description of the territory presently subject to the reassumption of jurisdiction and shall state the date on which the reassumption becomes effective. A copy of the notice shall immediately be sent to the petitioning tribe and to the attorney general, governor and highest court of the affected State or States.

(c) Reasons for disapproval of a petition shall be sent immediately to the petitioning tribe or tribes.

(d) When a petition has been disapproved a tribe or tribes may repetition after taking action to overcome the deficiencies of the first petition.

§ 13.15 Administrative appeals.

The decision of the Assistant Secretary—Indian Affairs may be appealed under procedures established in 43 CFR 4.350–4.369.[1]

§ 13.16 Technical assistance after disapproval.

If a petition is disapproved, the Bureau shall immediately offer technical assistance to the tribal governing body for the purpose of overcoming the defect in the petition or plan that resulted in the disapproval.

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[1] Sections 4.350–4.369 of 43 CFR part 4, were removed at 46 FR 7335, Jan. 23, 1981.

SUBCHAPTER C—PROBATE

PART 15—DETERMINATION OF HEIRS AND APPROVAL OF WILLS, EXCEPT AS TO MEMBERS OF THE FIVE CIVILIZED TRIBES AND OSAGE INDIANS

AUTHORITY: Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 588, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; 25 U.S.C. 372, 373, 374, 373a, 373b.

§15.1 Cross reference.

For special rules applicable to proceedings in Indian Probate (Determination of Heirs and Approval of Wills, Except as to Members of the Five Civilized Tribes and Osage Indians), including hearings, and appeals relating to such matters within the jurisdiction of the Board of Indian Appeals, Office of Hearings and Appeals, see subpart D of part 4 of subtitle A—Office of the Secretary of the Interior, of title 43 of the Code of Federal Regulations, subpart A of part 4 and all of the general rules in subpart B of part 4, not inconsistent with the special rules in subpart D of part 4 are also applicable to such Indian probate proceedings.

[36 FR 7184, Apr. 15, 1971]

PART 16—ESTATES OF INDIANS OF THE FIVE CIVILIZED TRIBES

Sec.
16.1 Definitions.
16.2 Scope of regulations.
16.3 Legal representation in State courts.
16.4 Exchange of information within the Department.
16.5 Acceptance and acknowledgement of service of process.
16.6 Authority of attorneys in State court litigation.
16.7 Performance of Federal functions by successor State courts.
16.8 Summary distribution of small liquid estates.
16.9 Escheat of estates of decedents.

AUTHORITY: 5 U.S.C. 301 (Interprets or applies Act of Apr. 26, 1906, ch. 1876, 34 Stat. 137, see 25 U.S.C. 355nt (1970); Act of May 27, 1908, ch. 199, 35 Stat. 312, see 25 U.S.C. 355nt (1970); Act of June 14, 1918, ch. 101, 40 Stat. 606, 25 U.S.C. 355, 375 (1970); Act of Apr. 12, 1926, ch. 115, 44 Stat. 239, see 25 U.S.C. 355nt (1970); Act of June 26, 1936, ch. 831, 49 Stat. 1967, 25 U.S.C. 501-509 (1970); Act of Aug. 4, 1947, ch. 458, 61 Stat. 731, 25 U.S.C. 502 (1970) and see 25 U.S.C. 355nt (1970); Act of Aug. 12, 1953, ch. 409, 67 Stat. 558, 25 U.S.C. 375c (1970) and see 25 U.S.C. 355nt (1970); Act of Aug. 11, 1955, ch. 786, 69 Stat. 666, see 25 U.S.C. 355nt (1970); Act of Aug. 29, 1967, Pub. L. 90-76, 81 Stat. 177, 25 U.S.C. 786-788 (1970); and Act of May 7, 1970, Pub. L. 91-240, 84 Stat. 203, 25 U.S.C. 375d (1970)).

SOURCE: 37 FR 7082, Apr. 8, 1972, unless otherwise noted.

§16.1 Definitions.

(a) The term *Secretary* means the Secretary of the Interior and his authorized representatives.

(b) The term *Bureau* means the Bureau of Indian Affairs, acting through the Commissioner of Indian Affairs and his authorized representatives, including field officials who are responsible for matters affecting properties in which a restricted interest is owned by an Indian of the Five Civilized Tribes.

(c) The term *Field Solicitor* means the Regional Solicitor, Southwest Region, Page Belcher Federal Building, P.O. Box 3156, Tulsa, Oklahoma 74101.

(d) The term *Indian of the Five Civilized Tribes* means an individual who is either an enrolled member of the Cherokee, Chickasaw, Choctaw, Creek, or Seminole Tribes of Oklahoma, or a descendant of an enrolled member thereof.

(e) The term *restricted interest* means an interest owned in real or personal property subject to restraints upon alienation imposed either by Federal statute or by administrative action authorized by Federal statute. Although this term includes property subject to restraints which may be removed by administrative action, its use in this part refers primarily to property subject to restraints which State courts have jurisdiction to remove in proceedings such as those specified in §16.2.

[37 FR 7082, Apr. 8, 1972, as amended at 50 FR 12529, Mar. 29, 1985]

§ 16.2 Scope of regulations.

The regulations in this part set forth procedures for discharging the responsibilities of the Secretary in connection with the performance by State courts, as authorized by Federal statutes, of certain functions which affect properties in which a restricted interest is owned by an Indian of the Five Civilized Tribes. These State court functions pertain to such proceedings as guardianship, heirship determination, will probate, estate administration, conveyance approval, partition of real property, confirmation of title to real property, and appeal from action removing or failing to remove restrictions against alienation. In addition, the regulations in this part set forth procedures for discharging certain other responsibilities of the Secretary not necessarily involving State court functions, such as escheat of estates of deceased Indians of the Five Civilized Tribes.

§ 16.3 Legal representation in State courts.

The statutory duties of the Secretary to furnish legal advice to any Indian of the Five Civilized Tribes, and to represent such Indian in State courts, in matters affecting a restricted interest owned by such Indian, shall be performed by attorneys on the staff of the Solicitor, under the supervision of the Field Solicitor. Such advice and representation shall be undertaken to the extent that the Field Solicitor in his discretion shall consider necessary to discharge said duties, with due regard to the complexity of the legal action contemplated, the availability of staff attorneys for such purposes, the value and extent of the restricted interests involved, possible conflicts between Indians claiming to be owners of such interests, the preference of such owners concerning legal representation, the financial resources available to such owners, the extent to which such owners require similar legal services in connection with their unrestricted properties, and any other factor appropriate for consideration.

§ 16.4 Exchange of information within the Department.

To the extent that information may be useful in discharging the duties covered by the regulations in this part, the Bureau shall furnish to the Field Solicitor, either on a current basis or at periodic intervals, processes and notices received concerning court cases and information, as current and complete as may reasonably be obtainable, concerning the estate and status of an Indian of the Five Civilized Tribes for whom legal assistance should be rendered pursuant to the regulations in this part. Similarly, to the extent that such information may be useful for Bureau action or records, the Field Solicitor shall advise the Bureau of court proceedings, information received, and action taken in furnishing legal services pursuant to the regulations in this part.

§ 16.5 Acceptance and acknowledgement of service of process.

Service by the Field Solicitor or any other person of any process or notice, pursuant to any Federal statute which by its express terms is applicable to Indians of the Five Civilized Tribes, may be accepted and acknowledged by the Field Solicitor, or by any attorney authorized to perform the duties specified in § 16.3, on behalf of the Secretary and the Bureau, notwithstanding any specific designation in such statute of the official to be served (such as the Secretary, superintendent for the Five Civilized Tribes, Probate Attorney, etc.).

§ 16.6 Authority of attorneys in State court litigation.

Attorneys authorized to perform the duties specified in § 16.3 appearing in State court litigation in their official capacities are authorized to take such action as the Secretary could take if he were personally appearing in his official capacity as counsel therein, including but not limited to the filing or decision against filing of initial, responsive, or supplemental pleadings and appeals from adverse judgments, the exercise or decision against exercise of a preferential right to purchase property subject to sale, the removal or decision against removal of actions

to Federal courts, and the waiver or decision against waiver of the failure to make timely service of process or notice.

§ 16.7 Performance of Federal functions by successor State courts.

All authority to perform functions relating to Indians of the Five Civilized Tribes which by express provisions of Federal statute had been conferred upon probate or county courts of Oklahoma before such county courts were abolished on January 12, 1969, has since that date been vested in the successor district courts of that State, and all rights of litigants continue undiminished in the successor forum, including the right to appeal from adverse decisions rendered therein to the successor appellate court.

(Interprets or applies Okla. Op. Atty. Gen. No. 68-381 (Dec. 20, 1968))

§ 16.8 Summary distribution of small liquid estates.

Where information, furnished by the Bureau pursuant to § 16.4 or otherwise obtained, reveals that the estate of a deceased Indian of the Five Civilized Tribes contains no restricted land but consists of a restricted interest in funds not exceeding $500 on deposit to the credit of the decedent, the Field Solicitor shall, in the absence of any final decree determining the heirs or legatees of the decedent, prepare and furnish to the Bureau a finding and order of distribution, based on affidavit or other proof of death and heirship or bequest, setting forth the facts of death and heirship or bequest and the amount payable from the estate to each person determined to be an heir or legatee of the decedent. The Field Solicitor shall mail to each person considered a possible claimant to any portion of the estate, as an heir or legatee or otherwise, a copy of the order with a notice that the order shall become final 30 days after the date of mailing thereof unless within that period the officer by whom the order was signed shall have received a written request for reconsideration of the order. After final action on any order has been taken by the Field Solicitor, the Bureau shall distribute the funds in the estate of the decedent in accordance with such final action, unless a timely appeal therefrom has been filed in accordance with part 2 of this title.

§ 16.9 Escheat of estates of decedents.

Where information, furnished by the Bureau pursuant to § 16.4 or otherwise obtained, reveals that the estate of a deceased Indian of the Five Civilized Tribes, who has been dead 5 or more years after having died intestate without heirs, consists of restricted interests in lands or rents or profits therefrom, the Field Solicitor shall, in the absence of any final decree determining that the decedent died without heirs or devisees, prepare and furnish to the Bureau a finding and order of escheat, based on affidavit or other proof of intestate death without heirs, setting forth the restricted interests in lands or rents or profits therefrom which have by escheat vested in the tribe which allotted the lands. The Field Solicitor shall mail to each person considered a possible claimant to any portion of the estate, as an heir or devisee or otherwise, a copy of the order with a notice that the order shall become final 30 days after the date of mailing thereof unless within that period the officer by whom the order was signed shall have received a written request for reconsideration of the order. After final action on any order has been taken by the Field Solicitor, the Bureau shall cause a certified copy thereof to be filed in the land records of each county within which are located any escheated lands described therein and shall cause the tribe to be credited with any funds in said estate which arose from rents or profits from such lands, unless a timely appeal therefrom has been filed in accordance with part 2 of this title.

PART 17—ACTION ON WILLS OF OSAGE INDIANS

Sec.
17.1 Definitions.
17.2 Attorneys.
17.3 Pleadings, notice and hearings.
17.4 Service on interested parties.
17.5 Minors represented at hearings.
17.6 Examination of witness.
17.7 Limiting number of witnesses.
17.8 Supplemental hearing.
17.9 Briefs.

17.10 Record.
17.11 Inspection of wills and approval as to form during testator's lifetime.
17.12 Approval.
17.13 Government employees as beneficiaries.
17.14 Appeals.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10530, Dec. 24, 1957, unless otherwise noted.

§ 17.1 Definitions.

When used in the regulations in this part the following words or terms shall have the meaning shown below:

(a) *Secretary* means the Secretary of the Interior.

(b) *Commissioner* means the Commissioner of Indian Affairs.

(c) *Superintendent* means the superintendent of the Osage Indian Agency.

(d) *Special attorney* means the special attorney for Osage Indians, or other legal officer designated by the Commissioner.

§ 17.2 Attorneys.

Interested parties may appear in person or by attorneys at law. Attorneys must file written authority to appear for their clients in the proceedings.

§ 17.3 Pleadings, notice and hearings.

(a) The petition for approval of the will of a deceased Osage Indian may be set down for hearing at a date not less than 30 days from the date the petition is filed. Hearings shall be conducted only after notice of the time and place of such hearings shall have been given by mail. The notice shall be mailed not less than 10 days preceding the date of the hearing and shall state that the special attorney will, at the time and place specified therein, take testimony to determine whether the will of the deceased Osage Indian shall be approved or disapproved. The notice shall list the presumptive heirs of the decedent and the beneficiaries under such will, and shall notify the attesting witnesses to be present and testify. It shall state that all persons interested in the estate of the decedent may be present at the hearing. The notice shall further state that the special attorney may, in his discretion, continue the hearing to another time or place to be announced at the original hearing.

(b) Any interested party desiring to contest approval of the will may, not less than 5 days before the date set for hearing, file written objections in triplicate, showing that a copy thereof was served upon attorneys for the proponent and other attorneys of record in the case. Such contestant shall clearly state the interest he takes under the will and, if a presumptive heir, the interest he would take under the Oklahoma law. The contestant shall further state specifically the ground on which his contest is based.

§ 17.4 Service on interested parties.

A copy of the notice of hearing shall be served by mail, at his last known place of residence, on each presumptive heir; each beneficiary under the will offered for consideration; and each attesting witness thereto. Such notice must be mailed not less than 10 days preceding the date set for the hearing.

§ 17.5 Minors represented at hearings.

Minor heirs at law, who by the terms of the will are devised a lesser interest in the estate than they would take by descent, of whose interests are challenged, shall, with the approval of the special attorney, be represented at the hearing by guardians ad litem. Such minors 14 years of age or over may indicate in writing their choice of guardians ad litem. If no such choice has been indicated on the date of the hearing, the special attorney shall make the selection and appointment.

§ 17.6 Examination of witness.

All testimony taken at the hearing shall be reduced to writing. Any interested party may cross-examine any witness. Attorneys and others will be required to adhere to the rules of evidence of the State of Oklahoma. If, in addition to oral testimony, affidavits or dispositions are introduced, they must be read, and any opposing claimant may require the presence of the affiant, if practicable, either at that or a subsequent hearing, and opportunity shall be given for cross-examination or for having counter interrogatories answered.

§17.7 Limiting number of witnesses.

When the evidence seems clear and conclusive, the special attorney may, in his discretion, limit the number of witnesses to be examined formally upon any matter.

§17.8 Supplemental hearing.

When it appears that a supplemental hearing is necessary to secure material evidence, such a hearing may be conducted after notice has been given to those persons on whom notice of the original hearing was served and to such other persons as the testimony taken at the original hearing indicates may have a possible interest in the estate.

§17.9 Briefs.

When there are two or more parties with conflicting interests, the party upon whom the burden of proof may fall may be allowed a reasonable time, not to exceed 30 days following the conclusion of the hearing, in which to file a brief or other statement of his contentions, showing service on opposing counsel or litigant. The latter shall then be allowed not to exceed 20 days in which to file an answer brief or statement, and his opponent shall have 10 days thereafter to file a reply brief or statement. Upon proper showing the special attorney may grant extensions of time. Each brief or statement shall be filed in duplicate.

§17.10 Record.

After the hearing or hearings on the will have been terminated the special attorney shall make up the record and transmit it with his recommendation to the superintendent. The record shall contain:

(a) Copy of notices mailed to the attesting witnesses and the interested parties.

(b) Proof of mailing of notices.

(c) The evidence received at the hearing or hearings.

(d) The original of the will or wills considered at the hearings.

(e) A copy of all the pleadings.

The record, except the original will, shall be a part of the permanent files of the Osage Agency.

§17.11 Inspection of wills and approval as to form during testator's lifetime.

When a will has been executed and filed with the superintendent during the lifetime of the testator, the will shall be considered by the special attorney who may endorse on such will ''approved as to form.'' A will shall be held in absolute confidence and its contents shall not be divulged prior to the death of the testator.

§17.12 Approval.

After hearings have been concluded in conformity with this part the superintendent shall approve or disapprove the wills of deceased Osage Indians.

§17.13 Government employees as beneficiaries.

In considering the will of a deceased Osage Indian the superintendent may disapprove any will which names as a beneficiary thereunder a government employee who is not related to the testator by blood, or otherwise the natural object of the testator's bounty.

§17.14 Appeals.

(a) Notwithstanding the provisions in part 2 of this chapter concerning appeals generally from administrative actions, any appeal from the action of the superintendent of approving or disapproving a will shall be taken to the Secretary. Upon the superintendent's final action of approval or disapproval of a will, he shall immediately notify by mail all attorneys appearing in the case, together with interested parties who are not represented by attorneys, of his decision and of their right to file an appeal.

(b) Any party desiring to appeal from the action of the superintendent shall, within 15 days after the date of the mailing of notice of the decision file with the superintendent a notice in writing of his intention to appeal to the Secretary, and shall, within 30 days after the mailing date of such notice by the superintendent, perfect his appeal to the Secretary by service of the appeal upon the superintendent who will transmit the entire record to the Secretary. If no notice of intention to appeal is given within 15 days, the superintendent's decision will be final.

(c) Upon the filing of notice with the superintendent of intention to appeal or the perfecting of an appeal by service upon the superintendent, at the same time similar notice and service shall be effected by the party taking an appeal upon opposing counsel or litigants, and a statement included in the appeal that this has been done. A party taking an appeal may, within the same 30-day period allowed for perfecting an appeal, file a brief or other written statement of his contentions, showing also service of that brief upon opposing counsel or litigants. Opposing counsel or litigants shall have 30 days from the date of the service of appellant's brief upon them in which to file an answer brief, copies of which also shall be served upon the appellant or opposing counsel and litigants. Except by special permission, no other briefs will be allowed on appeal.

[26 FR 10930, Nov. 22, 1961]

SUBCHAPTER D—HUMAN SERVICES

PART 20—FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAM

Subpart A—Definitions, Purpose and Policy

Sec.
20.1 Definitions.
20.2 Purpose.
20.3 Policy.
20.4 Information collection.

Subpart B—Administrative Procedures

20.10 Application for assistance or services.
20.11 Securing information.
20.12 Decision.
20.13 Written notice of proposed decision.
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Subpart C—Eligibility Conditions

20.20 General.
20.21 General assistance.
20.22 Child welfare assistance.
20.23 Miscellaneous assistance.
20.24 Family and community services.
20.25 Consultation with tribes.

Subpart D—Hearings and Appeals

20.30 Hearings and appeals.

AUTHORITY: 25 U.S.C. 13; §20.21 also issued under Pub. L. 98–473.

SOURCE: 42 FR 6568, Feb. 2, 1977, unless otherwise noted.

Subpart A—Definitions, Purpose and Policy

§20.1 Definitions.

(a) *Appeal* means a written request for correction of an action or decision claimed to violate a person's legal rights or privileges as provided in part 2 of this chapter.

(b) *Applicant* means an individual or persons on whose behalf an application for assistance and/or services has been made under the part.

(c) *Application* means the process through which a request is made for assistance or services.

(d) *Area Director* means the Bureau official in charge of an Area Office.

(e) *Authorized representative* means a parent or other caretaker relative, conservator, legal guardian, foster parent, attorney, paralegal acting under the supervision of an attorney, friend or other spokesperson acting on behalf or representing the applicant or recipient.

(f) *Bureau* means the Bureau of Indian Affairs, U.S. Department of the Interior.

(g) *Child* means a person under the age of 18 or such other age of majority as may be established for purposes of parental support by tribal or state law (if any) applicable to the person at his or her residence, except that no person who has been emancipated by marriage shall be deemed a child.

(h) *Child welfare assistance* means financial assistance provided on behalf of an Indian child, or an Indian under age 22 if assistance was initiated before age 18, who requires placement in a foster home or specialized non-medical care facility in accordance with standards of payments established by the State pursuant to the foster care program under title IV of the Social Security Act (49 Stat. 620) or who has need of special services not available under general assistance.

(i) *Commissioner* means the Commissioner of Indian Affairs.

(j) *Designated representative* means an official of the Bureau designated by a Superintendent to hold a hearing as prescribed in §20.30 and who has had no prior involvement in the proposed decision under §20.12 and whose hearing decision under §20.30 shall have the same force and effect as if rendered by the Superintendent.

(k) *Family and community services* means social services, including protective services, usually not including money payments, provided through the social work skills of casework, group work or community development to solve social problems involving children, adults or communities.

(l) *Foster care service* means those social services provided when an Indian person lives away from the family home.

(m) *BIA general assistance* is a secondary or residual source of assistance for eligible Indian people and means financial aid payments to eligible Indian individuals and households for assistance in meeting the cost of essential needs.

(n) *Indian* means any person who is a member, or a one-fourth degree or more blood quantum descendant of a member of any Indian tribe.

(o) *Indian court* means Indian tribal court or court of Indian offenses.

(p) *Indian tribe* means any Indian tribe, band, nation, rancheria, pueblo, colony, or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the U.S. Government for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(q) *Miscellaneous assistance* means a financial payment made for burial services, to facilitate the provision of emergency food or disaster programs, or for other financial needs not defined in this part but related to assistance for needy Indians.

(r) *Near reservation* means those areas or communities adjacent or contiguous to reservations which are designated by the Commissioner upon recommendation of the local Bureau Superintendent, which recommendation shall be based upon consultation with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as: (1) Number of Indian people native to the reservation residing in the area, (2) a written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation, (3) geographical proximity of the area to the reservation, and (4) administrative feasibility of providing an adequate level of services to the area. The Commissioner shall designate each area and publish the designations in the FEDERAL REGISTER.

(s) *Need* means the deficit after consideration of income and other liquid assets necessary to meet the cost of basic need items and special need items as defined by the Bureau standard of assistance for the State in which the applicant or recipient resides.

(t) *Public assistance* means those programs of assistance provided under title IV of the Social Security Act (49 Stat. 620), as amended, and includes the Aid to Families with Dependent Children (AFDC) Program provided under title IV–A.

(u) *Recipient* means an individual or persons who have been determined as eligible and are receiving financial assistance or services under this part.

(v) *Reservation* means any federally recognized Indian tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

(w) *Resources* means income and other liquid assets available to an Indian person or household to meet current living costs, unless otherwise specifically excluded by Federal statute. Liquid assets are those properties in the form of cash or other financial instruments which can be converted to cash, such as savings or checking accounts, promissory notes, mortgages and similar properties.

(x) *Secretary* means the Secretary of the Interior.

(y) *Superintendent* means the Bureau official in charge of an agency office.

(z) *Supplemental Security Income* means those programs of assistance provided under title XVI of the Social Security Act (49 Stat. 620), as amended.

(aa) *Traditional Indian country* means the State of Oklahoma except Oklahoma City and non-trust land in the city of Tulsa.

(bb) *Tribal governing body* means the recognized governing body of an Indian tribe.

(cc) *Essential needs* include at a minimum shelter, food, clothing and utilities, but do not include needs, except for burial expenses, beyond those basic and special needs included in the Bureau standard of assistance for the State where the Indian individual or household lives.

(dd) *Household* means persons living together with the *head of household* who may be related or unrelated to the *head of household* and who function as members of the family.

(ee) *Tribal Work Experience Program (TWEP)* means a program operated by tribal contract which provides eligible participants with work experience and training that promotes and preserves work habits and develops work skills.

(ff) *Recipient* means an individual to whom or for whom a BIA general assistance payment is made for the month.

(gg) *Case* includes all individuals in the household as defined in §20.1(dd) whose needs are included in the BIA general assistance payment made for the month.

(25 U.S.C. 2 and 9)

[42 FR 6568, Feb. 2, 1977, as amended at 50 FR 39928, Sept. 30, 1985]

§20.2 Purpose.

The regulations in this part govern the provision of general assistance, child welfare assistance, miscellaneous assistance and family and community services to eligible Indians.

§20.3 Policy.

When assistance or services are not available or not being provided by state, local, or other agencies, general assistance, child welfare assistance, miscellaneous assistance and family and community services shall be provided for eligible Indians by the Bureau in a manner designed to promote personal and family unity and economic and social stability, working toward attainment of self-sufficiency.

§20.4 Information collection.

The information collection requirements contained in §§20.10, 20.11, 20.22, 20.23, and 20.24 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0017. The information is collected to determine applicant eligibility for services. The information will be used to determine eligibility and to insure uniformity of services. Response is required to obtain a benefit.

[53 FR 21994, June 13, 1988]

Subpart B—Administrative Procedures

§20.10 Application for assistance or services.

(a) Written or oral applications by or on behalf of any individual or group will be accepted for assistance or services under this part. In addition to applications from persons desiring assistance or services, referrals will be accepted directly from relatives, interested individuals, social welfare agencies, law enforcement agencies, courts and others.

(b) Applications for assistance or services under this part shall be made to the Superintendent or an official representative. All applications for assistance shall ultimately be reduced to a written form. However, a written statement by an appropriate representative of the Bureau social services program as to why protective social services under §20.24(b)(2) were provided may be accepted in lieu of a written application.

§20.11 Securing information.

(a) The applicant will be the primary source of information regarding his circumstances for the purpose of determining eligibility and need. If it is necessary to secure information from other sources, the applicant will be asked to authorize the release of information. The applicant will be informed, in advance, of the kinds of information needed, the source to be used, and that the information obtained will be used only in connection with the application for assistance or services under this part or as otherwise required by law.

(b) Recipients shall be required to make timely and accurate reports of any change in circumstances which may affect their eligibility or the amount of financial assistance.

§20.12 Decision.

(a) Action on an application for assistance shall consist of the following:

(1) The application shall be approved if the applicant meets the appropriate eligibility criteria set forth in subpart C of this part for the type of assistance

requested, and financial assistance may be retroactive, as appropriate, to the date of application.

(2) The application shall be denied if the applicant does not meet the appropriate eligibility criteria set forth in subpart C of this part for the type of assistance requested.

(3) Action to approve or deny an application shall be made within 30 days of the date of the application, or if not the applicant shall be notified in writing of the reasons why such a decision cannot be made, but in no event shall any application be held pending beyond 45 days of the date of the application.

(b) As appropriate, other decision actions include the following:

(1) To increase or decrease the amount of recipient's financial assistance pursuant to the eligibility criteria set forth in subpart C of this part.

(2) To suspend or terminate recipient's financial assistance pursuant to the eligibility criteria set forth in subpart C of this part.

§ 20.13 Written notice of proposed decision.

Written notice of all proposed decisions shall be mailed or hand delivered to the applicant or recipient which clearly and completely advise of their legal rights to contest any adverse proposed decision as set forth in § 20.30 or under part 2 of this chapter and shall further consist of the following:

(a) A statement of the action being taken, the effective date, and the reasons for the decision.

(b) If the action is to reduce, suspend, or terminate financial assistance to the recipient, the written notice shall be provided to the recipient 20 days in advance of the proposed effective date.

(c) Shall advise the applicant or recipient of his right to request a hearing if dissatisfied with the proposed decision.

(d) Shall advise the applicant or recipient of his right to be represented by an authorized representative at no expense to the Bureau.

(e) Shall advise the applicant or recipient that failure to request a hearing within the 20 day period following the date of notice of proposed decision will cause the proposed decision to become final subject to appeal under part 2 of this chapter, and that the decision will not be disturbed except for fraud or gross irregularity or where found by higher authority that failure to appeal on the part of the applicant or recipient would result in inequity or injustice to the parties.

§ 20.14 Adjusting incorrect payments.

(a) When the Bureau finds that an incorrect payment of financial assistance has been made to an individual or family, proper adjustment or recovery shall be required, based upon individual need as appropriate to the circumstances that resulted in an incorrect payment. However, prior to adjustment or recovery by the Bureau, the recipient shall be notified of the proposal to correct the payment and given an informal opportunity to resolve the matter. If an informal resolution cannot be attained the recipient is entitled to a written notice of decision, and a hearing if requested, in accordance with §§ 20.12, 20.13 and 20.30. Unless a hearing is requested or an appeal made, the proposed decision shall become final within 20 days after written notice is mailed or delivered to the recipient.

(b) Applicants and recipients who knowingly and willfully provide the Bureau with false, fictitious or fraudulent information are subject to prosecution under 18 U.S.C. 1001, which carries a fine of not more than $10,000 or imprisonment for not more than five years, or both.

Subpart C—Eligibility Conditions

§ 20.20 General.

(a) Basic eligibility conditions shall be:

(1) The applicant must be an Indian, except that in the States of Alaska and Oklahoma a one-fourth degree or more Indian or Native blood quantum will be an additional eligibility requirement; and

(2) The applicant must reside on a reservation; or

(3) The applicant must reside near reservation as specifically defined in § 20.1(r) and be a member of the tribe that requested designation of the near reservation service area.

(b) The applicant must further meet the additional eligibility requirements for each of the specific programs of assistance or services as set forth in §§20.21 through 20.24 in order to be eligible for assistance or services under that program.

(c) Upon written request of an appropriate tribal governing body or the appropriate Bureau line official, the Deputy Assistant Secretary may authorize emergency short-term assistance and services to Indians, not otherwise eligible under this part, who reside on a reservation or in designated near-reservation areas, when necessary to meet need as defined at §20.21(s) and prevent hardship caused by fire, flood or acts of nature.

[42 FR 6568, Feb. 2, 1977, as amended at 50 FR 12529, Mar. 29, 1985; 50 FR 39928, Sept. 30, 1985]

§20.21 General assistance.

In States where BIA general assistance would otherwise be available, the Bureau will not provide general assistance:

(a) To on or near-reservation members of tribes currently not served by BIA general assistance unless the tribe formally requests, through final governing body action, that the Bureau operate a general assistance program. Such request for BIA general assistance should be timed with the Bureau's next fiscal year for the general assistance program;

(b) In any State having a general assistance program available to meet the needs of eligible citizens, including the needs of Indians. A State general assistance program is available if payments are:

(1) Available statewide to eligible individuals and families, including Indians on reservations;

(2) Authorized by State law with funds regularly appropriated to make such payments, or if State law requires all county governments or localities to make such payments even though payments may fluctuate subject to the limited availability of funds;

(3) For the purpose of meeting monthly minimum essential needs on a continuing basis; and,

(4) Where the Bureau provides general assistance on a reservation in one State and that reservation extends into a bordering State(s), the Bureau will provide general assistance to members of the tribe in the other bordering State(s) based on the standard of assistance in the State where the recipient or applicant resides. However, the Bureau will provide such assistance in the bordering State(s) only to those members who are not eligible for State general assistance as defined in §20.21.

(c) In States where the Bureau provides general assistance, Indians, in order to be considered eligible for general assistance under this part, must meet the requirements prescribed in §20.20(a); and the following conditions:

(1) Must not receive financial assistance from AFDC or Supplemental Security Income (SSI);

(i) Indians eligible to receive AFDC or SSI will be allowed to receive BIA general assistance once they have applied for and until they begin to receive assistance payments from AFDC or SSI, except that payment shall be authorized when good cause reasons, such as physical isolation, lack of transportation or intermittent availability of State eligibility specialists, temporarily prevent concurrent application; and when it can be documented that the application process has been initiated by scheduling an appointment, or that the BIA/tribal caseworker has initiated the application process on behalf of the general assistance applicant.

(ii) The Bureau will not make payments for any month for which AFDC or SSI payments are made.

(2) Must have insufficient resources to meet the basic and special need items defined by the Bureau standard of assistance;

(3) Must apply for assistance from other Federal, State, county, or local programs for which they may be eligible concurrent with application to the Bureau for general assistance, unless good cause reasons, such as physical isolation with sporadic access to transportation or intermittent availability of State eligibility specialists, temporarily prevent concurrent application; and when it can be documented that the application process has been initiated by scheduling an appointment, or

that the BIA/tribal caseworker has initiated the application process on behalf of the general assistance applicant.

(d) *Redeterminations.* (1) The Bureau shall determine eligibility and the amount of the BIA general assistance payment based on its best estimate of income and circumstances which will exist in the month for which the Bureau is to provide assistance. Recipients are required to immediately inform the Bureau of any changes in status which may affect their eligibility or amount of assistance. The Bureau shall redetermine eligibility:

(i) Whenever there is an indication of a change in circumstances;

(ii) Not less frequently than every three (3) months for individuals who are not exempt under paragraph 20.21(i) from seeking or accepting employment;

(iii) Not less frequently than one every six (6) months for all households.

(2) The redetermination process shall include personal contact with the recipient, preferably a home visit, not less than once a year to evaluate changes in living circumstances and household composition, and to assess the need for continued assistance.

(e) *Standards of assistance.* (1) Where the Bureau operates a general assistance program, its standard of assistance shall be the AFDC payment standard used in the State where the applicant or recipient resides. In a State that meets 100 percent of the need standard, the Bureau standard is the need standard. In a State that does not meet need in full and applies a rateable reduction to the need standard, the Bureau standard is the rateable reduced amount. The AFDC payment standard incorporates the same basic and special need items as the AFDC standard of assistance, and is the amount from which the Bureau will subtract net income and liquid assets to determine eligibility for and the amount of the Bureau's general assistance payment.

(2) In the event the State has no standard for one adult, the Bureau standard for one adult shall be the difference between the standard for one child and the standard for a household of two which includes an adult, or one-half the amount of the standard for a household of two, whichever is greater.

(f) *Resources.* In determining eligibility for and the amount of the general assistance payment, the Bureau shall consider all types of income and other liquid assets available for support and maintenance unless otherwise disregarded under § 20.21(g), or specifically excluded by Federal statute. All earned or unearned income will be counted as income in the month received and as a liquid asset thereafter, except certain income from the sale of real personal property as provided for under § 20.21(f)(2)(i). Resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum, as defined at 25 CFR 20.1(w), and has the ability to make such sum available for support and maintenance.

(1) *Earned income* means in cash or in kind earned by an individual through the receipt of wages, salary, commissions, or profit from activities in which he is engaged as a self-employed individual or as an employee.

(i) Earned income includes earnings over a period of time for which settlement is made at one given time, as in the instance of the sale of farm crops, livestock, etc.

(ii) With respect to self-employment, *earned income* means total profit from business enterprise, i.e., gross receipts after subtracting business expenses directly related to producing the goods or services and without which the goods or services could not be produced. Business expenses do not include items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment and payments on the principal on loans for capital assets or durable goods.

(2) *Unearned income* includes but is not limited to:

(i) Income from: Interest; oil and gas and other mineral royalties; rental property; cash contributions such as child support and alimony; retirement, disability and unemployment benefits; per capita payments not excluded by Federal statute; sale of trust land and real or personal property which is not

set aside for the purpose of reinvestment in trust land or a primary residence, or if set aside, has not been reinvested in trust land or a primary residence at the end of one year from the date the income was received; Federal and State tax refunds. All of the above shall be counted to the extent they are not disregarded by Federal statute.

(ii) Income in kind contributions providing shelter at no cost to the individual or household: In establishing the amount of the in kind contribution, the Bureau shall use the amount for shelter included in the standard, if identifiable, or 25 percent of the standard unless there is evidence provided that the value of free shelter is less; and,

(iii) Assistance provided by a State, county or local agency.

(3) The Bureau shall prorate (i): Over a 12-month period recurring annual income received by individuals, such as teachers whose regular employment does not engage them on a year round basis; (ii) income received by individuals employed on a contractual basis over the period of the contract; and (iii) intermittent income received quarterly, semiannually or yearly over the period covered by the income. The Bureau shall prorate the income unless there is evidence that the income will not continue to be received in the future. *However*, for a period of three years from the publication date of these regulations, the Bureau will not prorate lease income which has been obligated by a household in a manner which makes it unavailable in consumable form to the household.

(g) *Disregards.* (1) The Bureau shall disregard, from the gross amount of earned income, amounts deducted for:

(i) Federal, State and local taxes;

(ii) Social Security (FICA);

(iii) Health insurance;

(iv) Work related expenses, including reasonable transportation costs;

(v) Child care costs except where the other parent in the home is not working or is not disabled; and

(vi) The cost of special clothing, tools and equipment directly related to the individual's employment. All of the above, as appropriate, will be disregarded from self-employment income after deducting costs of doing business.

(2) The Bureau shall disregard as income, or other liquid assets:

(i) The first $1000 of liquid resources available to the household;

(ii) Any home produce from garden, livestock and poultry utilized by the applicant or recipient and his/her household for their consumption;

(iii) Resources specifically excluded by Federal statute.

(h) *Payments.* (1) The Bureau shall make assistance payments in an amount not to exceed the difference between the Bureau standard of assistance and all resources not otherwise disregarded. In the event the State in which the individual or household lives applies a rateable reduction to that difference or maintains a system of dollar maximums on the payment, the Bureau shall also apply the rateable reduction and/or the maximum to the payment.

(2) If there is more than one household living in a dwelling and the household(s) receiving general assistance contribute to shelter expenses, the Bureau shall prorate the actual shelter cost, but the amount in the payment for shelter will not exceed the amount in the Bureau standard of assistance for shelter, or if not identifiable, the prorated amount, in addition to other needs, cannot exceed the total amount in the standard for individuals or households in similar circumstances.

(3) The Bureau will round the payment down to the next lower whole dollar.

(4) In no case shall the Bureau provide retroactive payments of general assistance for any period prior to the date of application for assistance.

(i) *Employment.* (1) An applicant or recipient must actively seek employment, including use of available tribally or Bureau-funded employment assistance services. The individual is also required to accept available local employment. An individual who does not comply will not be eligible for general assistance. These requirements do not apply to:

(i) A person under the age of 16 years;

(ii) A full-time student under the age of 19 who is attending an elementary or secondary school, or a vocational or technical school equivalent to a secondary school;

(iii) A person suffering from an illness, when it is determined on medical evidence or on other sound basis that the individual's illness or injury is serious enough to temporarily prevent entry into employment;

(iv) An incapacitated person, when verified that a physical or mental impairment determined by a physician or licensed or certified psychologist, by itself or in conjunction with age, prevents the individual from engaging in employment;

(v) A person who, upon the documented assessment of the social services caseworker, and pending examination by a physician or other appropriate professional, is deemed essentially incapacitated because of age, physical or mental impairment;

(vi) An individual responsible for a person in the home who has a verified physical or mental impairment that requires the individual in the home on a virtually continuous basis, and there is no other appropriate household member available;

(vii) A parent or other individual who personally provides full-time care of a child under that age of 6;

(viii) A parent or minor living in the household if the other parent is not exempt from seeking or accepting employment;

(ix) A person who is working 30 hours or more per week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 work days; and

(x) A person for whom employment is not accessible in a commuting time that is reasonable and comparable with others in similar circumstances.

(2) Where the tribe administers a Tribal Work Experience Program (TWEP), the nonexempt individual shall be available to participate. However, participation does not relieve the individual from seeking or accepting employment.

(3) Individuals not exempt under one of the preceding clauses of this section must, in seeking employment, provide evidence of efforts to obtain employment.

(4) Individuals not exempt under one of the preceding clauses of this section, who refuse, or otherwise fail to seek and accept available local employment, or who voluntarily and without good cause do not maintain their employed status, will not be eligible to receive general assistance for a period of 60 days following the date of application, or eligibility redetermination.

(i) The 60-day period of ineligibility will be renewed upon each application for general assistance until the applicant complies with the requirement to seek and accept available local employment.

(ii) An unemployed individual against whom a 60-day eligibility suspension has been levied will have the suspension period reduced by 30 days upon providing evidence that he/she has made effort to seek employment.

(iii) Periods of eligibility suspension shall affect only the individual who fails to comply with the provision of this section, but shall not apply to other members of his/her household.

[50 FR 39928, Sept. 30, 1985]

§ 20.22 Child welfare assistance.

An Indian child meeting the requirements prescribed in § 20.20(a) shall be considered eligible for child welfare assistance or services under this part. *Provided,* That:

(a) The child's legally responsible parent, guardian, or Indian court having jurisdiction:

(1) Requests such assistance in writing and is unable to provide necessary care and guidance for the child in his own home for other than financial reasons and is unable to meet the cost of foster care.

(2) Requests such assistance in writing and is unable to provide for the child's special needs which cannot be through other assistance programs including the Bureau's general assistance program.

(b) The child is not receiving and is not eligible to receive public assistance or Supplemental Security Income payments and is not included in such payments made to others. However, an otherwise eligible child may receive child welfare assistance under this part upon application for and pending initial receipt of public assistance or Supplemental Security Income payments

and may receive continued services irrespective of assistance payments if such services are not otherwise available.

(c) The child resides in an area where comparable child welfare assistance and services are not available or are not being provided to all residents on the same basis from a State, county or local public jurisdiction.

§20.23 Miscellaneous assistance.

In the absence of other resources, miscellaneous assistance shall be provided to eligible Indians meeting the requirements prescribed in §20.20(a): *Provided,* That they reside in areas where comparable miscellaneous assistance is not available or is not being provided to all residents on the same basis from a State, county or local public jurisdiction.

§20.24 Family and community services.

(a) Family and community services shall be provided for Indians meeting the requirements prescribed in §20.20(a) who request such services or on whose behalf such services are requested.

(b) Family and community services may include, but are not limited to, the following:

(1) Family and individual counseling to assist in solving problems related to family functioning, housekeeping practices, care and supervision of children, interpersonal relationships, economic opportunity, money management, and problems related to illness, physical or mental handicaps, drug abuse, alcoholism and violation of law.

(2) Protective services which are provided when children or adults are deprived temporarily or permanently of needed supervision by responsible adults, or are neglected, exploited, or need services when they are mentally or physically handicapped or otherwise disabled, and for children who have run away from home. Protective services will be developed in consultation and cooperation with tribal protective services, if applicable. Such services may include but are not limited to the following:

(i) Response to requests from members of the community on behalf of children or adults alleged to need protective services.

(ii) Family and supplemental services, including referral for homemaker and day care services, which appropriately divert children from the juvenile justice system.

(iii) Services to responsible family members or guardians to seek appropriate court protections for the child or adult and, in the absence of such responsible adult, to seek the appointment of a guardian.

(3) Services to Indian courts, which may include but are not limited to the following:

(i) Investigations and reports as to allegations of child and adult abuse and neglect, abandonment, delinquency, running away from home, and conditions such as mentally or physically handicapped or otherwise disabled.

(ii) Provision of social information related to the disposition of a case, including evaluation of alternative resources of treatment.

(iii) Provision of services requested by the court prior to adjudication such as marriage and divorce counseling, child custody, and after adjudication such as probation, foster care, supervision of children and adults in their own home.

(4) Foster care services for children which shall be provided when an Indian child is a recipient of child welfare assistance under §20.22 and services are not available from another source, and may be provided as needed for an Indian child living away from its parent(s) in the absence of a child welfare assistance payment. Such services shall include but are not limited to:

(i) Determination that foster care is the best available plan for the child.

(ii) Development of an immediate and long range plan to establish a more stable emotional and social life for the child and its family, including referral of the child for adoption when indicated.

(iii) Services in the recruitment and development of suitable foster homes and other foster care facilities.

(iv) Services to responsible family members, or at the request of an Indian court having jurisdiction, in the selection of a suitable foster care facility

and a continued evaluation of the suitability of the facility.

(v) Services in the placement of an Indian child for long or short term foster care suited to his needs and to review the plan periodically.

(vi) Services to parent(s), foster parent(s), or other caretaker(s) to provide care and guidance for the child in foster care.

(5) Foster care services for adults which shall be provided when a general assistance payment under § 20.21 is made for their care in a foster care facilty, or when needed in the absence of a general assistance payment. The services may include but are not limited to:

(i) Arranging for care in a private family home, or a facility for the care of the aged or disabled except where the primary service provided by the facility is medical.

(ii) Services to responsible family members, guardians, or at the request of an Indian court having jurisdiction, in selecting a facility which will provide needed care.

(iii) Services providing for continuity with family and community ties.

(iv) Services to continually evaluate the suitability of the selected care facility, including referral for other care as indicated.

(6) Community services which are services involving other groups, agencies, and facilities in the community may include but are not limited to:

(i) Responses to community needs for evaluating social conditions affecting the well-being of its citizens.

(ii) Treatment of the identified conditions that are within the competence of social services.

(iii) Maintenance of a liaison relationship with other community agencies for the purpose of:

(A) Identifying the availability of services that may be utilized to assist in solving the social problems of individuals, families and children.

(B) Facilitating the use of available community services by Indian persons who need them.

§ 20.25 Consultation with tribes.

Bureau personnel shall upon request provide consultation and advice to tribal governing bodies and other tribal entities including Indian courts seeking to organize their social services to meet more effectively the social service needs of their people. See § 11.21 of this chapter. All programs provided for in this part shall, insofar as possible, be consistent with tribal custom, codes and law.

Subpart D—Hearings and Appeals

§ 20.30 Hearings and appeals.

(a) Any applicant or recipient of financial assistance under this part who is dissatisfied with any decision or action concerning eligibility for or receipt of financial assistance may request a hearing before the Superintendent or his designated representative within 20 days after the date of mailing or delivery of the written notice of the proposed decision as provided in § 20.13. The Superintendent may extend the 20 day period for good cause shown and documented in the record.

(b) Upon request for a hearing by a recipient dissatisfied by a proposed decision the recipient's financial assistance will be continued or reinstated to provide no break in financial assistance until the date of decision by the Superintendent or his designated representative in accordance with § 20.30(f).

(c) The Superintendent or his designated representative shall set a date for the hearing within 10 days of the date of request for a hearing, at a location convenient to both parties, and give written notice to the applicant or recipient.

(d) The written notice of hearing date and location shall include:

(1) A statement of the issues.

(2) The applicant or recipient's right to be heard in person, or to be represented by an authorized representative at no expense to the Bureau.

(3) The applicant or recipient's right to present both oral and written evidence, and written statements prior to or during the hearing.

(4) The applicant or recipient's right to confront and cross-examine witnesses at the hearing.

(5) The applicant or recipient shall have the right of one continuance of not more than 10 days with respect to the date of hearing.

(6) The applicant or recipient's right to examine and copy, at a reasonable time before and during the hearing, his case record as it relates to the proposed action being contested.

(e) The Superintendent or his designated representative shall conduct the hearing in an informal but orderly manner, record the hearing, and provide the applicant or recipient with a transcript of the hearing upon request.

(f) The Superintendent or his designated representative shall render a written decision within 10 days of the completion of the hearing. The written decision shall consist of the following:

(1) A written statement covering the evidence relied upon and reasons for the decision.

(2) The applicant or recipient's right to further appeal from any dissatisfied decision in accordance with procedures for appeals from administrative actions set forth in part 2 of this chapter.

(g) An interested party wishing to make such an appeal may request Bureau assistance in preparation of the appeal also as prescribed in part 2 of this chapter.

PART 21—ARRANGEMENT WITH STATES, TERRITORIES, OR OTHER AGENCIES FOR RELIEF OF DISTRESS AND SOCIAL WELFARE OF INDIANS

Sec.

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AUTHORITY: Sec. 3, 48 Stat. 596, as amended; 25 U.S.C. 454.

SOURCE: 22 FR 10531, Dec. 24, 1957, unless otherwise noted.

§ 21.1 Commissioner to negotiate contracts.

The Commissioner of Indian Affairs may negotiate with State, territory, county or other Federal welfare agencies for such agencies to provide welfare services as contemplated by the Act of June 4, 1936 (49 Stat. 1458; 25 U.S.C. 452), for Indians residing within a particular State within the exterior boundaries of Indian reservations under the jurisdiction of the Bureau of Indian Affairs or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs.

[29 FR 5828, May 2, 1964]

§ 21.2 Contracts; by whom executed.

All contracts executed for the purposes of § 21.1 shall be signed on behalf of the United States by the Commissioner of Indian Affairs. The proper officer of the State, territory, county or welfare agency shall execute the contract on its behalf. Evidence of the authority of such officer must accompany the contract. All contracts must be executed in quintuplicate. (They shall become effective only after approval by the Secretary of the Interior.)

§ 21.3 State or other contracting agency furnish plan of operation.

A plan executed by the proper State or other agency entering into the contract shall accompany each instrument. This plan shall describe the services and assistance to be rendered under the terms of the contract. It shall include a budget showing the plan of expenditure of the funds to be turned over to the State or other agency. Upon the approval of the contract, no deviation from the plan shall be made unless approved in advance by the Commissioner of Indian Affairs.

§ 21.4 Standards of service.

Standards of aid, care, and service rendered to the Indians under the contracts shall not be less than those standards maintained by the State for other clients requiring similar aid, care and services.

§ 21.5 Personnel.

The personnel employed for public welfare services to Indians under the contract shall be subject to the State merit system and to the approval of the Commissioner of Indian Affairs and the welfare authorities of the State, unless otherwise provided in the contract.

§ 21.6 Financial statement.

Thirty days after the close of each fiscal year, the State or other agency to which funds have been furnished pursuant to the contract shall submit to the Commissioner of Indian Affairs a detailed financial statement showing all expenditures made pursuant to the contract. An explanation shall be contained of any deviation from the plan originally submitted by the agency. The records of the contractor shall be available for inspection by representatives of the Bureau of Indian Affairs.

§ 21.7 Cooperative services.

The Bureau will maintain cooperative services through its superintendents and other personnel to further the purposes of the contract. When mutually agreed to in the contract, the Bureau may maintain on its payroll one or more representatives whose duties shall be described in the contract and the salary and expenses of any such person or persons shall constitute part of the funds to be furnished to the State or other contracting agency.

§ 21.8 Use of Government property and facilities.

The contract shall specify the terms upon which property, other facilities and equipment of the Government may be used by the State or other agency. All contracts which provide for the use of Government automobiles shall require that the particular State or other agency shall be responsible for the return of the equipment in as good condition as when received, excepting usual wear and tear and depreciation and such agency shall be responsible for all damage or injury done to property or persons and shall carry sufficient insurance to cover same and expressly relieve the Government of any and all liability for any such personal injury or property damages committed while such automobile is in the possession of the contracting agency.

§ 21.9 Information collection.

The information collection requirements contained in §§ 21.3 and 21.6 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1076–0113 and 1076–0110, respectively. The information in § 21.3 is being collected to determine how contract funds are utilized. The information will be used to measure performance of the contractor and plan for future contracts. The information in § 21.6 is collected to specify the services or assistance to be rendered and the plan for expenditure of funds to be turned over to the state or agency. The information will be used to determine the adequacy of services and utilization of the budget provided by the contracting agency. Response is required to obtain a benefit.

[53 FR 21994, June 13, 1988]

PART 23—INDIAN CHILD WELFARE ACT

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23.71 Recordkeeping and information availability.

Subpart H—Assistance to State Courts

23.81 Assistance in identifying witnesses.
23.82 Assistance in identifying language interpreters.
23.83 Assistance in locating biological parents of Indian child after termination of adoption.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 1901–1952.

SOURCE: 59 FR 2256, Jan. 13, 1994, unless otherwise noted.

Subpart A—Purpose, Definitions, and Policy

§ 23.1 Purpose.

The purpose of the regulations in this part is to govern the provision of funding for, and the administration of Indian child and family service programs as authorized by the Indian Child Welfare Act of 1978 (Pub. L. 95–608, 92 Stat. 3069, 25 U.S.C. 2, 9, 1901–1952).

§ 23.2 Definitions.

Act means the Indian Child Welfare Act (ICWA), Pub. L. 95–608, 92 Stat. 3069, 25 U.S.C. 1901 *et seq.*

Assistant Secretary means the Assistant Secretary—Indian Affairs, the Department of the Interior.

Bureau of Indian Affairs (BIA) means the Bureau of Indian Affairs, the Department of the Interior.

Child custody proceeding includes:

(1) Foster care placement, which shall mean any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(2) Termination of parental rights, which shall mean any action resulting in the termination of the parent-child relationship;

(3) Preadoptive placement, which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement;

(4) Adoptive placement, which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption; and

(5) Other tribal placements made in accordance with the placement preferences of the Act, including the temporary or permanent placement of an Indian child in accordance with tribal children's codes and local tribal custom or tradition;

(6) The above terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime in the jurisdiction where the act occurred or upon an award, in a divorce proceeding, of custody to one of the parents.

Consortium means an association or partnership of two or more eligible applicants who enter into an agreement to administer a grant program and to provide services under the grant to Indian residents in a specific geographical area when it is administratively feasible to provide an adequate level of services within the area.

Extended family member shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

Grant means a written agreement between the BIA and the governing body of an Indian tribe or Indian organization wherein the BIA provides funds to the grantee to plan, conduct or administer specific programs, services, or activities and where the administrative and programmatic provisions are specifically delineated.

Grantee means the tribal governing body of an Indian tribe or Board of Directors of an Indian organization responsible for grant administration.

Grants officer means an officially designated officer who administers ICWA grants awarded by the Bureau of Indian Affairs, the Department of the Interior.

Indian means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1606.

Indian child means any unmarried person who is under age 18 and is either a member of an Indian tribe, or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

Indian child's tribe means the Indian tribe in which an Indian child is a member or is eligible for membership or, in the case of an Indian child who is a member of or is eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts, to be determined in accordance with the BIA's ''Guidelines for State Courts—Indian Child Custody Proceedings.''

Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody and control has been transferred by the parent of such child.

Indian organization, solely for purposes of eligibility for grants under subpart D of this part, means any legally established group, association, partnership, corporation, or other legal entity which is owned or controlled by Indians, or a majority (51 percent or more) of whose members are Indians.

Indian preference means preference and opportunities for employment and training provided to Indians in the administration of grants in accordance with section 7 (b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450).

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3 (c) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602 (c).

Off-reservation ICWA program means an ICWA program administered in accordance with 25 U.S.C. 1932 by an off-reservation Indian organization.

Parent means the biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The term does not include the unwed father where paternity has not been acknowledged or established.

Reservation means Indian country as defined in 18 U.S.C. 1151 and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

Secretary means the Secretary of the Interior.

Service areas solely for newly recognized or restored Indian tribes without established reservations means those service areas congressionally established by Federal law to be the equivalent of a reservation for the purpose of determining the eligibility of a newly recognized or restored Indian tribe and its members for all Federal services and benefits.

State court means any agent or agency of a state, including the District of

Columbia or any territory or possession of the United States, or any political subdivision empowered by law to terminate parental rights or to make foster care placements, preadoptive placements, or adoptive placements.

Subgrant means a secondary grant that undertakes part of the obligations of the primary grant, and assumes the legal and financial responsibility for the funds awarded and for the performance of the grant-supported activity.

Technical assistance means the provision of oral, written, or other relevant information and assistance to prospective grant applicants in the development of their grant proposals. Technical assistance may include a preliminary review of an application to assist the applicant in identifying the strengths and weaknesses of the proposal, ongoing program planning, design and evaluation, and such other program-specific assistance as is necessary for ongoing grant administration and management.

Title II means title II of Public Law 95–608, the Indian Child Welfare Act of 1978, which authorizes the Secretary to make grants to Indian tribes and off-reservation Indian organizations for the establishment and operation of Indian child and family service programs.

Tribal Court means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

Tribal government means the federally recognized governing body of an Indian tribe.

Value means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

§ 23.3 Policy.

In enacting the Indian Child Welfare Act of 1978, Pub. L. 95–608, the Congress has declared that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and Indian families by the establishment of minimum Federal standards to prevent the arbitrary removal of Indian children from their families and tribes and to ensure that measures which prevent the breakup of Indian families are followed in child custody proceedings (25 U.S.C. 1902). Indian child and family service programs receiving title II funds and operated by federally recognized Indian tribes and off-reservation Indian organizations shall reflect the unique values of Indian culture and promote the stability and security of Indian children, Indian families and Indian communities. It is the policy of the Bureau of Indian Affairs to emphasize and facilitate the comprehensive design, development and implementation of Indian child and family service programs in coordination with other Federal, state, local, and tribal programs which strengthen and preserve Indian families and Indian tribes.

§ 23.4 Information collection.

(a) The information collection requirements contained in § 23.13 of this part have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1076–0111.

(1) This information will be used to determine eligibility for payment of legal fees for indigent Indian parents and Indian custodians, involved in involuntary Indian child custody proceedings in state courts, who are not eligible for legal services through other mechanisms. Response to this request is required to obtain a benefit.

(2) Public reporting for this information collection is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any aspect of this information collection should be mailed or hand-delivered to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 336–SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs Paperwork Reduction Project—1076–0111, Office of Management and Budget, Washington, DC 20503.

(b) The information collection requirements contained in §§ 23.21; 23.31; 23.46; 23.47, and 23.71 have been approved by the Office of Management

and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0131. The information collection requirements under §§ 23.21 and 23.31 are collected in the form of ICWA grant applications from Indian tribes and off-reservation Indian organizations. A response to this request is required to obtain grant funds. The information collection requirements under § 23.46 are collected in compliance with applicable OMB circulars on financial management, internal and external controls and other fiscal assurances in accordance with existing Federal grant administration and reporting requirements. The grantee information collection requirements under § 23.47 are collected in the form of quarterly and annual program performance narrative reports and statistical data as required by the grant award document. Pursuant to 25 U.S.C. 1951, the information collection requirement under § 23.71 is collected from state courts entering final adoption decrees for any Indian child and is provided to and maintained by the Secretary.

(1) Public reporting for the information collection at §§ 23.21 and 23.31 is estimated to average 32 hours per response, including the time for reviewing the grant application instructions, gathering the necessary information and data, and completing the grant application. Public reporting for the information collection at §§ 23.46 and 23.47 is estimated to average a combined total of 16 annual hours per grantee, including the time for gathering the necessary information and data, and completing the required forms and reports. Public reporting for the information collection at § 23.71 is estimated to average 4 hours per response, including the time for obtaining and preparing the final adoption decree for transmittal to the Secretary.

(2) Direct comments regarding any of these burden estimates or any aspect of these information collection requirements should be mailed or hand-delivered to the Bureau of Indian Affairs, Information Collection Clearance Officer, room 336–SIB, 1849 C Street, NW., Washington, DC, 20240; and the Office of Information and Regulatory Affairs Paperwork Reduction Project—1076–0131, Office of Management and Budget, Washington, DC 20503.

Subpart B—Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel in State Courts

§ 23.11 Notice.

(a) In any involuntary proceeding in a state court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's Indian parents or custodians or tribe is known, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall directly notify the Indian parents, Indian custodians, and the child's tribe by certified mail with return receipt requested, of the pending proceedings and of their right of intervention. Notice shall include requisite information identified at paragraphs (d)(1) through (4) and (e)(1) through (6) of this section, consistent with the confidentiality requirement in paragraph (e)(7) of this section. Copies of these notices shall be sent to the Secretary and the appropriate Area Director listed in paragraphs (c)(1) through (12) of this section.

(b) If the identity or location of the Indian parents, Indian custodians or the child's tribe cannot be determined, notice of the pendency of any involuntary child custody proceeding involving an Indian child in a state court shall be sent by certified mail with return receipt requested to the appropriate Area Director listed in paragraphs (c)(1) through (12) of this section. In order to establish tribal identity, it is necessary to provide as much information as is known on the Indian child's direct lineal ancestors including, but not limited to, the information delineated at paragraph (d)(1) through (4) of this section.

(c)(1) For proceedings in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia or any territory or

possession of the United States, notices shall be sent to the following address: Eastern Area Director, Bureau of Indian Affairs, 3701 N. Fairfax Drive, Suite 260, Arlington, Virginia 22201.

(2) For proceedings in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, or Wisconsin, notices shall be sent to the following address: Minneapolis Area Director, Bureau of Indian Affairs, 331 Second Avenue South, Minneapolis, Minnesota 55401–2241.

(3) For proceedings in Nebraska, North Dakota, or South Dakota, notices shall be sent to the following address: Aberdeen Area Director, Bureau of Indian Affairs, 115 Fourth Avenue, SE, Aberdeen, South Dakota 57401.

(4) For proceedings in Kansas, Texas (except for notices to the Ysleta del Sur Pueblo of El Paso County, Texas), and the western Oklahoma counties of Alfalfa, Beaver, Beckman, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods and Woodward, notices shall be sent to the following address: Anadarko Area Director, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005. Notices to the Ysleta del Sur Pueblo of El Paso County, Texas shall be sent to the Albuquerque Area Director at the address listed in paragraph (c)(6) of this section.

(5) For proceedings in Wyoming or Montana (except for notices to the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana), notices shall be sent to the following address: Billings Area Director, Bureau of Indian Affairs, 316 N. 26th Street, Billings, Montana 59101. Notices to the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana, shall be sent to the Portland Area Director at the address listed in paragraph (c)(11) of this section.

(6) For proceedings in the Texas counties of El Paso and Hudspeth and proceedings in Colorado or New Mexico (exclusive of notices to the Navajo Tribe from the New Mexico counties listed in paragraph (c)(9) of this section), notices shall be sent to the following address: Albuquerque Area Director, Bureau of Indian Affairs, 615 First Street, P.O. Box 26567, Albuquerque, New Mexico 87125. Notices to the Navajo Tribe shall be sent to the Navajo Area Director at the address listed in paragraph (c)(9) of this section.

(7) For proceedings in Alaska (except for notices to the Metlakatla Indian Community, Alaska), notices shall be sent to the following address: Juneau Area Director, Bureau of Indian Affairs, 709 West 9th Street, Juneau, Alaska 99802–1219. Notices to the Metlakatla Indian Community of the Annette Islands Reserve, Alaska, shall be sent to the Portland Area Director at the address listed in paragraph (c)(11) of this section.

(8) For proceedings in Arkansas, Missouri, and the eastern Oklahoma counties of Adair, Atoka, Bryan, Carter, Cherokee, Craig, Creek, Choctaw, Coal, Delaware, Garvin, Grady, Haskell, Hughes, Jefferson, Johnson, Latimer, LeFlore, Love, Mayes, McCurtain, McClain, McIntosh, Murray, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pittsburg, Pontotoc, Pushmataha, Marshall, Rogers, Seminole, Sequoyah, Wagoner, Washington, Stephens, and Tulsa, notices shall be sent to the following address: Muskogee Area Director, Bureau of Indian Affairs, 101 North Fifth Street, Muskogee, Oklahoma 74401.

(9) For proceedings in the Arizona counties of Apache, Coconino (except for notices to the Hopi and San Juan Paiute Tribes) and Navajo (except for notices to the Hopi Tribe); the New Mexico counties of McKinley (except for notices to the Zuni Tribe), San Juan, and Socorro; and the Utah county of San Juan, notices shall be sent to the following address: Navajo Area Director, Bureau of Indian Affairs, P.O. Box 1060, Gallup, New Mexico 87301. Notices to the Hopi and San Juan Paiute Tribes shall be sent to the Phoenix Area Director at the address listed in paragraph (c)(10) of this section. Notices to the Zuni Tribe shall be sent to the Albuquerque Area Director at the address listed in paragraph (c)(6) of this section.

(10) For proceedings in Arizona (exclusive of notices to the Navajo Tribe

from those counties listed in paragraph (c)(9) of this section), Nevada or Utah (exclusive of San Juan county), notices shall be sent to the following address: Phoenix Area Director, Bureau of Indian Affairs, 1 North First Street, P.O. Box 10, Phoenix, Arizona 85001.

(11) For proceedings in Idaho, Oregon or Washington, notices shall be sent to the following address: Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232. All notices to the Confederated Salish & Kootenai Tribes of the Flathead Reservation, located in the Montana counties of Flathead, Lake, Missoula, and Sanders, shall also be sent to the Portland Area Director.

(12) For proceedings in California or Hawaii, notices shall be sent to the following address: Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

(d) Notice to the appropriate Area Director pursuant to paragraph (b) of this section may be sent by certified mail with return receipt requested or by personal service and shall include the following information, if known:

(1) Name of the Indian child, the child's birthdate and birthplace.

(2) Name of Indian tribe(s) in which the child is enrolled or may be eligible for enrollment.

(3) All names known, and current and former addresses of the Indian child's biological mother, biological father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden, married and former names or aliases; birthdates; places of birth and death; tribal enrollment numbers, and/or other identifying information.

(4) A copy of the petition, complaint or other document by which the proceeding was initiated.

(e) In addition, notice provided to the appropriate Area Director pursuant to paragraph (b) of this section shall include the following:

(1) A statement of the absolute right of the biological Indian parents, the child's Indian custodians and the child's tribe to intervene in the proceedings.

(2) A statement that if the Indian parent(s) or Indian custodian(s) is (are) unable to afford counsel, and where a state court determines indigency, counsel will be appointed to represent the Indian parent or Indian custodian where authorized by state law.

(3) A statement of the right of the Indian parents, Indian custodians and child's tribe to be granted, upon request, up to 20 additional days to prepare for the proceedings.

(4) The location, mailing address, and telephone number of the court and all parties notified pursuant to this section.

(5) A statement of the right of the Indian parents, Indian custodians and the child's tribe to petition the court for transfer of the proceeding to the child's tribal court pursuant to 25 U.S.C. 1911, absent objection by either parent: Provided, that such transfer shall be subject to declination by the tribal court of said tribe.

(6) A statement of the potential legal consequences of the proceedings on the future custodial and parental rights of the Indian parents or Indian custodians.

(7) A statement that, since child custody proceedings are conducted on a confidential basis, all parties notified shall keep confidential the information contained in the notice concerning the particular proceeding. The notices shall not be handled by anyone not needing the information contained in the notices in order to exercise the tribe's rights under the Act.

(f) Upon receipt of the notice, the Secretary or his/her designee shall make reasonable documented efforts to locate and notify the child's tribe and the child's Indian parents or Indian custodians. The Secretary or his/her designee shall have 15 days, after receipt of the notice from the persons initiating the proceedings, to notify the child's tribe and Indian parents or Indian custodians and send a copy of the notice to the court. If within the 15-day time period the Secretary or his/her designee is unable to verify that the child meets the criteria of an Indian child as defined in 25 U.S.C. 1903, or is unable to locate the Indian parents or Indian custodians, the Secretary or his/her designee shall so inform the court prior to initiation of the proceedings and state how much

more time, if any, will be needed to complete the search. The Secretary or his/her designee shall complete all research efforts, even if those efforts cannot be completed before the child custody proceeding begins.

(g) Upon request from a party to an Indian child custody proceeding, the Secretary or his/her designee shall make a reasonable attempt to identify and locate the child's tribe, Indian parents or Indian custodians to assist the party seeking the information.

§23.12 Designated tribal agent for service of notice.

Any Indian tribe entitled to notice pursuant to 25 U.S.C. 1912 may designate by resolution, or by such other form as the tribe's constitution or current practice requires, an agent for service of notice other than the tribal chairman and send a copy of the designation to the Secretary or his/her designee. The Secretary or his/her designee shall update and publish as necessary the names and addresses of the designated agents in the FEDERAL REGISTER. A current listing of such agents shall be available through the area offices.

§23.13 Payment for appointed counsel in involuntary Indian child custody proceedings in state courts.

(a) When a state court appoints counsel for an indigent Indian party in an involuntary Indian child custody proceeding for which the appointment of counsel is not authorized under state law, the court shall send written notice of the appointment to the BIA Area Director designated for that state in §23.11. The notice shall include the following:

(1) Name, address, and telephone number of attorney who has been appointed.

(2) Name and address of client for whom counsel is appointed.

(3) Relationship of client to child.

(4) Name of Indian child's tribe.

(5) Copy of the petition or complaint.

(6) Certification by the court that state law makes no provision for appointment of counsel in such proceedings.

(7) Certification by the court that the Indian client is indigent.

(b) The Area Director shall certify that the client is eligible to have his or her appointed counsel compensated by the BIA unless:

(1) The litigation does not involve a child custody proceeding as defined in 25 U.S.C. 1903 (1);

(2) The child who is the subject of the litigation is not an Indian child as defined in 25 U.S.C. 1903 (4);

(3) The client is neither the Indian child who is the subject of the litigation, the Indian child's parent as defined in 25 U.S.C. 1903 (9), nor the child's Indian custodian as defined in 25 U.S.C. 1903 (6);

(4) State law provides for appointment of counsel in such proceedings;

(5) The notice to the Area Director of appointment of counsel is incomplete; or

(6) Funds are not available for the particular fiscal year.

(c) No later than 10 days after receipt of the notice of appointment of counsel, the Area Director shall notify the court, the client, and the attorney in writing whether the client has been certified as eligible to have his or her attorney fees and expenses paid by the BIA. If certification is denied, the notice shall include written reasons for that decision, together with a statement that complies with 25 CFR 2.7 and that informs the applicant that the decision may be appealed to the Assistant Secretary. The Assistant Secretary shall consider appeals under this subsection in accordance with 25 CFR 2.20 (c) through (e). Appeal procedures shall be as set out in part 2 of this chapter.

(d) When determining attorney fees and expenses, the court shall:

(1) Determine the amount of payment due appointed counsel by the same procedures and criteria it uses in determining the fees and expenses to be paid appointed counsel in state juvenile delinquency proceedings; and

(2) Submit approved vouchers to the Area Director who certified eligibility for BIA payment, together with the court's certification that the amount requested is reasonable under the state standards considering the work actually performed in light of criteria that apply in determining fees and expenses for appointed counsel in state juvenile delinquency proceedings.

(e) The Area Director shall authorize the payment of attorney fees and expenses in the amount requested in the voucher approved by the court unless:

(1) The amount of payment due the state-appointed counsel is inconsistent with the fees and expenses specified in § 23.13 (d)(1); or

(2) The client has not been certified previously as eligible under paragraph (c) of this section; or

(3) The voucher is submitted later than 90 days after completion of the legal action involving a client certified as eligible for payment of legal fees under paragraph (b) of this section.

(f) No later than 15 days after receipt of a payment voucher, the Area Director shall send written notice to the court, the client, and the attorney stating the amount of payment, if any, that has been authorized. If the payment has been denied, or the amount authorized is less than the amount requested in the voucher approved by the court, the notice shall include a written statement of the reasons for the decision together with a statement that complies with 25 CFR 2.7 and that informs the client that the decision may be appealed to the Interior Board of Indian Appeals in accordance with 25 CFR 2.4 (e); 43 CFR 4.310 through 4.318 and 43 CFR 4.330 through 4.340.

(g) Failure of the Area Director to meet the deadline specified in paragraphs (c) and (f) of this section may be treated as a denial for purposes of appeal under paragraph (f) of this section.

(h) Payment for appointed counsel does not extend to Indian tribes involved in state court child custody proceedings or to Indian families involved in Indian child custody proceedings in tribal courts.

Subpart C—Grants to Indian Tribes for Title II Indian Child and Family Service Programs

§ 23.21 Noncompetitive tribal government grants.

(a) *Grant application information and technical assistance.* Information on grant application procedures and related information may be obtained from the appropriate Agency Superintendent or Area Director. Pre-award and ongoing technical assistance to tribal governments shall be provided in accordance with § 23.42 of this part.

(b) *Eligibility requirements for tribal governments.* The tribal government(s) of any Indian tribe or consortium of tribes may submit a properly documented application for a grant to the appropriate Agency Superintendent or Area Director. A tribe may neither submit more than one application for a grant nor be the beneficiary of more than one grant under this subpart.

(1) Through the publication of a FEDERAL REGISTER announcement at the outset of the implementation of the noncompetitive grant award process during which tribal applications will be solicited, the Assistant Secretary will notify eligible tribal applicants under this subpart of the amount of core funds available for their ICWA program. The funding levels will be based on the service area population to be served. Upon the receipt of this notice from the Agency Superintendent or appropriate Area Director, tribal applicants shall submit a completed ICWA application no later than 60 days after the receipt of this notice.

(2) A grant to be awarded under this subpart shall be limited to the tribal governing body(ies) of the tribe(s) to be served by the grant.

(3) For purposes of eligibility for newly recognized or restored Indian tribes without established reservations, such tribes shall be deemed eligible to apply for grants under this subpart to provide ICWA services within those service areas legislatively identified for such tribes.

(4) A grantee under this subpart may make a subgrant to another Indian tribe or an Indian organization subject to the provisions of § 23.45.

(c) *Revision or amendment of grants.* A grantee under this subpart may submit a written request and justification for a post-award grant modification covering material changes to the terms and conditions of the grant, subject to the approval of the grants officer. The request shall include a narrative description of any significant additions, deletions, or changes to the approved program activities or budget in the form of a grant amendment proposal.

(d) Continued annual funding of an ICWA grant under this subpart shall be

contingent upon the fulfillment of the requirements delineated at §23.23(c).

(e) Monitoring and program reporting requirements for grantees under this subpart are delineated at §§23.44 and 23.47.

§23.22 Purpose of tribal government grants.

(a) Grants awarded under this subpart are for the establishment and operation of tribally designed Indian child and family service programs. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and to ensure that the permanent removal of an Indian child from the custody of his or her Indian parent or Indian custodian shall be a last resort. Such child and family service programs may include, but need not be limited to:

(1) A system for licensing or otherwise regulating Indian foster and adoptive homes, such as establishing tribal standards for approval of on-reservation foster or adoptive homes;

(2) The operation and maintenance of facilities for counseling and treatment of Indian families and for the temporary custody of Indian children with the goal of strengthening Indian families and preventing parent-child separations;

(3) Family assistance, including homemaker and home counselors, protective day care and afterschool care, recreational activities, respite care, and employment support services with the goal of strengthening Indian families and contributing to family stability;

(4) Home improvement programs with the primary emphasis on preventing the removal of children due to unsafe home environments by making homes safer, but not to make extensive structural home improvements;

(5) The employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters, but not to establish tribal court systems;

(6) Education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) A subsidy program under which Indian adoptive children not eligible for state or BIA subsidy programs may be provided support comparable to that for which they could be eligible as foster children, taking into account the appropriate state standards of support for maintenance and medical needs;

(8) Guidance, legal representation and advice to Indian families involved in tribal, state, or Federal child custody proceedings; and

(9) Other programs designed to meet the intent and purposes of the Act.

(b) Grants may be provided to tribes in the preparation and implementation of child welfare codes within their jurisdiction or pursuant to a tribal-state agreement.

(c) Grantees under this subpart may enhance their capabilities by utilizing ICWA funds as non-Federal matching shares in connection with funds provided under titles IV–B, IV–E and XX of the Social Security Act or other Federal programs which contribute to and promote the intent and purposes of the Act through the provision of comprehensive child and family services in coordination with other tribal, Federal, state, and local resources available for the same purpose.

(d) Program income resulting from the operation of programs under this subpart, such as day care operations, may be retained and used for purposes similar to those for which the grant was awarded.

§23.23 Tribal government application contents.

(a) The appropriate Area Director shall, subject to the tribe's fulfillment of the mandatory application requirements and the availability of appropriated funds, make a grant to the tribal governing body of a tribe or consortium of tribes eligible to apply for a grant under this subpart.

(b) The following mandatory tribal application requirements must be submitted to the appropriate Agency Superintendent or Area Director in accordance with the timeframe established in §23.21 (b) of this subpart:

(1) A current tribal resolution requesting a grant by the Indian tribe(s) to be served by the grant. If an applicant is applying for a grant benefiting

more than one tribe (consortium), an authorizing resolution from each tribal government to be served must be included. The request must be in the form of a current tribal resolution by the tribal governing body and shall include the following information:

(i) The official name of tribe(s) applying for the grant and who will directly benefit from or receive services from the grant;

(ii) The proposed beginning and ending dates of the grant;

(iii) A provision stating that the resolution will remain in effect for the duration of the program or until the resolution expires or is rescinded; and

(iv) The signature of the authorized representative of the tribal government and the date thereof.

(2) A completed Application for Federal Assistance form, SF–424.

(3) A narrative needs assessment of the social problems or issues affecting the resident Indian population to be served; the geographic area(s) to be served; and estimated number of resident Indian families and/or persons to receive benefits or services from the program.

(4) A comprehensive developmental multi-year plan in narrative form describing what specific services and/or activities will be provided each program year and addressing the above-identified social problems or issues. At a minimum, the plan must include:

(i) The program goals and objectives, stated in measurable terms, to be achieved through the grant;

(ii) A narrative description of how Indian families and communities will benefit from the program; and

(iii) The methodology, including culturally defined approaches, and procedures by which the tribe(s) will accomplish the identified goals and objectives.

(5) An internal monitoring system to measure progress and accomplishments, and to assure that the quality and quantity of actual performance conforms to the requirements of the grant.

(6) A staffing plan that is consistent with the implementation of the above-described program plan of operation and the procedures necessary for the successful delivery of services.

(i) The plan must include proposed key personnel; their qualifications, training or experience relevant to the services to be provided; responsibilities; Indian preference criteria for employment; and position descriptions.

(ii) In accordance with 25 U.S.C. 3201 *et seq.* (Pub. L. 101–630), title IV, the Indian Child Protection and Family Violence Prevention Act, grantees shall conduct character and background investigations of those personnel identified in that statute. Grantees must initiate character and background investigations of said personnel prior to their actual employment, and complete the investigations in a timely manner.

(7) A program budget and budget narrative justification submitted on an annual basis for the amount of the award and supported by the proposed plan, appropriate program services and activities for the applicable grant year.

(8) Identification of any consultants and/or subgrantees the applicant proposes to employ; a description of the consultant and/or subgrantee services to be rendered; the qualifications and experience in performing the identified services; and the basis for the cost and amount to be paid for such services.

(9) A certification by a licensed accountant that the bookkeeping and accounting procedures which the tribe(s) uses or intends to use meet existing Federal standards for grant management and administration specified at § 23.46.

(10) A system for managing property and recordkeeping which complies with subpart D of 43 CFR part 2 implementing the Privacy Act (5 U.S.C. 552a) and with existing Federal requirements for grants at 25 CFR 276.5 and 276.11, including the maintenance and safeguarding of direct service case records on families and/or individuals served by the grant.

(11) A listing of equipment, facilities, and buildings necessary to carry out the grant program. Liability insurance coverage for buildings and their contents is recommended for grantees under this subpart.

(12) Pursuant to the Drug-Free Workplace Act of 1988, tribal programs shall comply with the mandatory Drug-Free Workplace Certification, a regulatory

requirement for Federal grant recipients.

(c) Continued annual funding of an ICWA program under this subpart shall be contingent upon the existing grant program receiving a satisfactory program evaluation from the area social services office for the previous year of operation. A copy of this evaluation must be submitted together with an annual budget and budget narrative justification in accordance with paragraph (b)(7) of this section. Minimum standards for receiving a satisfactory evaluation shall include:

(1) The timely submission of all fiscal and programmatic reports;

(2) A narrative program report indicating work accomplished in accordance with the applicant's approved multi-year plan and, if applicable, a description of any modification in programs or activities to be funded in the next fiscal year; and

(3) The implementation of mutually determined corrective action measures, if applicable.

Subpart D—Grants to Off-Reservation Indian Organizations for Title II Indian Child and Family Service Programs

§23.31 Competitive off-reservation grant process.

(a) Grant application procedures and related information may be obtained from the Area Director designated at §23.11 for processing ICWA notices for the state in which the applicant is located. Pre-award and ongoing technical assistance of off-reservation Indian organization grantees shall be provided in accordance with §23.42.

(b) Prior to the beginning of or during the applicable year(s) in which grants for off-reservation programs will be awarded competitively, the Assistant Secretary—Indian Affairs shall publish in the FEDERAL REGISTER an announcement of the grant application process for the year(s), including program priorities or special considerations (if any), applicant eligibility criteria, the required application contents, the amount of available funding and evaluation criteria for off-reservation programs.

(c) Based on the announcement described in paragraph (b) of this section, an off-reservation applicant shall prepare a multi-year developmental application in accordance with §23.33 of this subpart. To be considered in the area competitive review and scoring process, a complete application must be received by the deadline announced in the FEDERAL REGISTER by the Area Director designated at §23.11 for processing ICWA notices for the state in which the applicant is located.

(d) Eligibility requirements for off-reservation Indian organizations. The Secretary or his/her designee shall, contingent upon the availability of funds, make a multi-year grant under this subpart for an off-reservation program when officially requested by a resolution of the board of directors of the Indian organization applicant, upon the applicant's fulfillment of the mandatory application requirements and upon the applicant's successful competition pursuant to §23.33 of this subpart.

(e) A grant under this subpart for an off-reservation Indian organization shall be limited to the board of directors of the Indian organization which will administer the grant.

(f) Continued annual funding of a multi-year grant award to an off-reservation ICWA program under this subpart shall be contingent upon the grantee's fulfillment of the requirements delineated at §23.33 (e).

(g) Monitoring and program reporting requirements for grants awarded to off-reservation Indian organizations under this subpart are delineated at §§23.44 and 23.47.

§23.32 Purpose of off-reservation grants.

The Secretary or his/her designee is authorized to make grants to off-reservation Indian organizations to establish and operate off-reservation Indian child and family service programs for the purpose of stabilizing Indian families and tribes, preventing the breakup of Indian families and, in particular, to ensure that the permanent removal of an Indian child from the custody of his/her Indian parent or Indian custodian shall be a last resort. Child and family

service programs may include, but are not limited to:

(a) A system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate state standards of support for maintenance and medical needs;

(b) The operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children with the goal of strengthening and stabilizing Indian families;

(c) Family assistance (including homemaker and home counselors), protective day care and afterschool care, employment support services, recreational activities, and respite care with the goal of strengthening Indian families and contributing toward family stability; and

(d) Guidance, legal representation and advice to Indian families involved in state child custody proceedings.

§ 23.33 Competitive off-reservation application contents and application selection criteria.

(a) An application for a competitive multi-year grant under this subpart shall be submitted to the appropriate Area Director prior to or on the announced deadline date published in the FEDERAL REGISTER. The Area Director shall certify the application contents pursuant to § 23.34 and forward the application within five working days to the area review committee, composed of members designated by the Area Director, for competitive review and action. Modifications and/or information received after the close of the application period, as announced in the FEDERAL REGISTER, shall not be reviewed or considered by the area review committee in the competitive process.

(b) Mandatory application requirements for Indian organization applicants shall include:

(1) An official request for an ICWA grant program from the organization's board of directors covering the duration of the proposed program;

(2) A completed Application for Federal Assistance form, SF 424;

(3) Written assurances that the organization meets the definition of Indian organization at § 23.2;

(4) A copy of the organization's current Articles of Incorporation for the applicable grant years;

(5) Proof of the organization's nonprofit status;

(6) A copy of the organization's IRS tax exemption certificate and IRS employer identification number;

(7) Proof of liability insurance for the applicable grant years; and

(8) Current written assurances that the requirements of Circular A–128 for fiscal management, accounting, and recordkeeping are met.

(9) Pursuant to the Drug-Free Workplace Act of 1988, all grantees under this subpart shall comply with the mandatory Drug-Free Workplace Certification, a regulatory requirement for Federal grant recipients.

(c) *Competitive application selection criteria.* The Area Director or his/her designated representative shall select those proposals which will in his/her judgment best promote the proposes of the Act. Selection shall be made through the area review committee process in which each application will be scored individually and ranked according to score, taking into consideration the mandatory requirements as specified above and the following selection criteria:

(1) The degree to which the application reflects an understanding of the social problems or issues affecting the resident Indian client population which the applicant proposes to serve;

(2) Whether the applicant presents a narrative needs assessment, quantitative data and demographics of the client Indian population to be served;

(3) Estimates of the number of Indian people to receive benefits or services from the program based on available data;

(4) Program goals and objectives to be achieved through the grant;

(5) A comprehensive developmental multi-year narrative plan describing what specific services and/or activities will be provided each program year and addressing the above-identified social problems or issues. At a minimum, the

plan must include a narrative description of the program; the program goals and objectives, stated in measurable terms, to be achieved through the grant; and the methodology, including culturally defined approaches, and procedures by which the grantee will accomplish the identified goals and objectives;

(6) An internal monitoring system the grantee will use to measure progress and accomplishments, and to ensure that the quality and quantity of actual performance conforms to the requirements of the grant;

(7) Documentation of the relative accessibility which the Indian population to be served under a specific proposal already has to existing child and family service programs emphasizing the prevention of Indian family breakups, such as mandatory state services. Factors to be considered in determining accessibility include:

(i) Cultural barriers;

(ii) Discrimination against Indians;

(iii) Inability of potential Indian clientele to pay for services;

(iv) Technical barriers created by existing public or private programs;

(v) Availability of transportation to existing programs;

(vi) Distance between the Indian community to be served under the proposal and the nearest existing programs;

(vii) Quality of services provided to Indian clientele; and

(viii) Relevance of services provided to specific needs of the Indian clientele.

(8) If the proposed program duplicates existing Federal, state, or local child and family service programs emphasizing the prevention of Indian family breakups, proper and current documented evidence that repeated attempts to obtain services have been unsuccessful;

(9) Evidence of substantial support from the Indian community or communities to be served, including but not limited to:

(i) Tribal support evidenced by a tribal resolution or cooperative service agreements between the administrative bodies of the affected tribe(s) and the applicant for the duration of the grant period, or

(ii) Letters of support from social services organizations familiar with the applicant's past work experience;

(10) A staffing plan that is consistent with the implementation of the above-described program plan of operation and the procedures necessary for the successful delivery of services. The plan must include proposed key personnel, their qualifications, training or experience relevant to the services to be provided, responsibilities, Indian preference criteria for employment and position descriptions. In accordance with 25 U.S.C. 3201 et seq. (Pub. L. 101–630), Title IV, the Indian Child Protection and Family Violence Prevention Act, grantees shall conduct character and background investigations of those personnel identified in that statute prior to their actual employment;

(11) The reasonableness and relevance of the estimated overall costs of the proposed program or services and their overall relation to the organization's funding base, activities, and mission;

(12) The degree to which the detailed annual budget and justification for the requested funds are consistent with, and clearly supported by, the proposed plan and by appropriate program services and activities for the applicable grant year;

(13) The applicant's identification of any consultants and/or subgrantees it proposes to employ; description of the services to be rendered; the qualifications and experience of said personnel, reflecting the requirements for performing the identified services; and the basis for the cost and the amount to be paid for such services;

(14) Certification by a licensed accountant that the bookkeeping and accounting procedures that the applicant uses or intends to use meet existing Federal standards for grant administration and management specified at § 23.46;

(15) The compliance of property management and recordkeeping systems with subpart D of 43 CFR part 2 (the Privacy Act, 5 U.S.C. 552a), and with existing Federal requirements for grants at 25 CFR 276.5 and 276.11, including the maintenance and safeguarding of direct service case records on families and/or individuals served by the grant;

(16) A description of the proposed facilities, equipment, and buildings necessary to carry out the grant activities; and

(17) Proof of liability insurance coverage for the applicable grant year(s).

(d) Two or more applications receiving the same competitive score will be prioritized in accordance with announcements made in the FEDERAL REGISTER pursuant to § 23.31 (b) for the applicable year(s).

(e) Continued annual funding of a multi-year grant award to an off-reservation ICWA program under this subpart shall be contingent upon the availability of appropriated funds and upon the existing grant program receiving a satisfactory program evaluation from the area social services office for the previous year of operation. A copy of this evaluation shall be submitted together with an annual budget and budget narrative justification in accordance with paragraph (c)(10) of this section. Minimum standards for receiving a satisfactory evaluation shall include the timely submission of all fiscal and programmatic reports; a narrative program report indicating work accomplished in accordance with the initial approved multi-year plan; and the implementation of mutually determined corrective action measures, if applicable.

§ 23.34 Review and decision on off-reservation applications by Area Director.

(a) *Area office certification*. Upon receipt of an application for a grant by an off-reservation Indian organization at the area office, the Area Director shall:

(1) Complete and sign the area office certification form. In completing the area certification form, the Area Director shall assess and certify whether applications contain and meet all the application requirements specified at § 23.33. Area Directors shall be responsible for the completion of the area office certification forms for all applications submitted by off-reservation Indian organizations.

(2) Acknowledge receipt of the application to the applicant and advise the applicant of the disposition of the application within 10 days of receipt; and

(3) Transmit all applications within five working days of receipt to the area review committee for competitive review and subsequent approval or disapproval of the applications.

(b) *Area office competitive review and decision for off-reservation applications.* Upon receipt of an application for an off-reservation grant under this part requiring the approval of the Area Director, the Area Director shall:

(1) Establish and convene an area review committee, chaired by a person qualified by knowledge, training and experience in the delivery of Indian child and family services.

(2) Review the area office certification form required in paragraph (a) of this section.

(3) Review the application in accordance with the competitive review procedures prescribed in § 23.33. An application shall not receive approval for funding under the area competitive review and scoring process unless a review of the application determines that it:

(i) Contains all the information required in § 23.33 which must be received by the close of the application period. Modifications of the grant application received after the close of the application period shall not be considered in the competitive review process.

(ii) Receives at least the established minimum score in an area competitive review, using the application selection criteria and scoring process set out in § 23.33. The minimum score shall be established by the Central Office prior to each application period and announced in the FEDERAL REGISTER for the applicable grants year(s).

(4) Approve or disapprove the application and promptly notify the applicant in writing of the approval or disapproval of the application. If the application is disapproved, the Area Director shall include in the written notice the specific reasons therefore.

(c) The actual funding amounts for the initial grant year shall be subject to appropriations available nationwide and the continued funding of an approved off-reservation grant application under subpart D of this part shall be subject to available funds received

by the respective area office for the applicable grant year. Initial funding decisions and subsequent decisions with respect to funding level amounts for all approved grant applications under this part shall be made by the Area Director.

§23.35 Deadline for Central Office action.

Within 30 days of the receipt of grant reporting forms from the Area Directors identifying approved and disapproved applications pursuant to subpart D of this part and recommended funding levels for approved applications, the Secretary or his/her designee shall process the Area Directors' funding requests.

Subpart E—General and Uniform Grant Administration Provisions and Requirements

§23.41 Uniform grant administration provisions, requirements and applicability.

The general and uniform grant administration provisions and requirements specified at 25 CFR part 276 and under this subpart are applicable to all grants awarded to tribal governments and off-reservation Indian organizations under this part, except to the extent inconsistent with an applicable Federal statute, regulation or OMB circular.

§23.42 Technical assistance.

(a) Pre-award and ongoing technical assistance may be requested by an Indian tribe or off-reservation Indian organization from the appropriate agency or area office to which the tribe or organization will be submitting an application for funds under subparts C and D of this part. A request for pre-award technical assistance by an off-reservation Indian organization must be received by the Area Director designated at §23.11 for the state in which the applicant is located no later than 10 days prior to the application deadline to assure sufficient time for area response.

(b) Pre-award and ongoing technical assistance may be provided by the appropriate BIA agency or area office for purposes of program planning and design, assistance in establishing internal program monitoring and evaluation criteria for ongoing grant administration and management, and for other appropriate assistance requested.

(c) The area social services staff shall provide technical assistance to grantees upon receipt of an authorized request from the grantee or when review of the grantee's quarterly performance reports shows that:

(1) An ICWA program is yielding results that are or will be detrimental to the welfare of the intended Indian beneficiaries of the program;

(2) A program has substantially failed to implement its goals and objectives;

(3) There are serious irregularities in the fiscal management of the grant; or

(4) The grantee is otherwise deficient in its program performance.

(5) Upon receiving an authorized request from the grantee, the area social services staff and/or grants officer shall provide the necessary technical assistance to arrive at mutually determined corrective action measures and their actual implementation, if necessary, and the timeframes within which said corrective actions will be implemented.

§23.43 Authority for grant approval and execution.

(a) *Tribal government programs.* The appropriate Agency Superintendent or Area Director may approve a grant application and its subsequent execution under subpart C when the intent, purpose and scope of the application pertains solely to reservations located within the service area jurisdiction of the agency or area office.

(b) *Off-reservation programs.* The appropriate Area Director may approve a grant application and its subsequent execution under subpart D when the intent, purpose and scope of the grant proposal pertains to off-reservation Indian service populations or programs.

§23.44 Grant administration and monitoring.

All grantees under this part shall be responsible for managing day-to-day program operations to ensure that program performance goals are being achieved and to ensure compliance with the provisions of the grant award document and other applicable Federal

requirements. Unless delegated to the Agency Superintendent, appropriate area office personnel designated by the Area Director shall be responsible for all grant program and fiscal monitoring responsibilities.

§ 23.45 Subgrants.

A tribal government grantee may make a subgrant under subpart C of this part, provided that such subgrants are for the purpose for which the grant was made and that the grantee retains administrative and financial responsibility over the activity and the funds.

§ 23.46 Financial management, internal and external controls and other assurances.

Grantee financial management systems shall comply with the following standards for accurate, current and complete disclosure of financial activities.

(a) OMB Circular A–87 (Cost principles for state and local governments and federally recognized Indian tribal governments).

(b) OMB Circular A–102 (Common rule 43 CFR part 12).

(c) OMB Circular A–128 (Single Audit Act).

(d) OMB Circular A–110 or 122 (Cost principles for non-profit organizations and tribal organizations, where applicable).

(e) *Internal control.* Effective control and accountability must be maintained for all grants. Grantees must adequately safeguard any property and must ensure that it is used solely for authorized purposes.

(f) *Budget control.* Actual expenditures must be compared with budgeted amounts for the grant. Financial information must be related to program performance requirements.

(g) *Source documentation*. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, grant documents, or other information required by the grantee's financial management system. The Secretary or his/her designee may review the adequacy of the financial management system of an Indian tribe(s) or off-reservation Indian organization applying for a grant under this part.

(h) Pursuant to 18 U.S.C. 641, whoever embezzles, steals, purloins, or knowingly converts to his or her use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or whoever receives, conceals, or retains the same with intent to convert it to his or her use or gain, knowing it to have been embezzled, stolen, purloined, or converted shall be fined not more than $10,000 or imprisoned not more than 10 years, or both; but if the value of such property does not exceed the sum of $100, he or she shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 23.47 Reports and availability of information to Indians.

(a) Any tribal government or off-reservation Indian organization receiving a grant under this part shall make general programmatic information and reports concerning that grant available to the Indian people it serves or represents. Access to this information may be requested in writing and shall be made available within 10 days of receipt of the request. Except as required by title IV of Pub. L. 101–630, the Indian Child Protection and Family Violence Prevention Act, grantees shall hold confidential all information obtained from persons receiving services from the program, and shall not release such information without the individual's written consent. Information may be disclosed in a manner which does not identify or lead to the identification of particular individuals.

(b) Grantees shall submit Standard Form 269 or 269A on a quarterly and an annual basis to report their status of funds by the dates specified in the grant award document.

(c) Grantees shall furnish and submit the following written quarterly and annual program reports by the dates specified in the award document:

(1) Quarterly and annual statistical and narrative program performance reports which shall include, but need not be limited to, the following;

(i) A summary of actual accomplishments and significant activities as related to program objectives established for the grant period;

(ii) The grantee's evaluation of program performance using the internal monitoring system submitted in their application;

(iii) Reports on all significant ICWA direct service grant activities including but not limited to the following information:

(A) Significant title II activities;

(B) Data reflecting numbers of individuals referred for out-of-home placements, number of individuals benefiting from title II services and types of services provided, and

(C) Information and referral activities.

(iv) Child abuse and neglect statistical reports and related information as required by 25 U.S.C. 2434, Pub. L. 99–570, the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986;

(v) A summary of problems encountered or reasons for not meeting established objectives;

(vi) Any deliverable or product required in the grant; and

(vii) Additional pertinent information when appropriate.

(2) The BIA may negotiate for the provision of other grant-related reports not previously identified.

(d) Events may occur between scheduled performance reporting dates which have significant impact on the grant-supported activity. In such cases, the grantee must inform the awarding agency as soon as problems, delays, adverse conditions, or serious incidents giving rise to liability become known and which will materially impair its ability to meet the objectives of the grant.

§23.48 Matching shares and agreements.

(a) Grant funds provided to Indian tribes under subpart C of this part may be used as non-Federal matching shares in connection with funds provided under titles IV-B, IV-E and XX of the Social Security Act or such other Federal programs which contribute to and promote the purposes of the Act as specified in §§23.3 and 23.22 (25 U.S.C. 1931).

(b) Pursuant to 25 U.S.C. 1933, in furtherance of the establishment, operation, and funding of programs funded under subparts C and D of this part, the Secretary may enter into agreements with the Secretary of Health and Human Services. The latter Secretary is authorized by the Act to use funds appropriated for the Department of Health and Human Services for programs similar to those funded under subparts C and D of this part (25 U.S.C. 1931 and 1932), provided that authority to make payment pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

§23.49 Fair and uniform provision of services.

(a) Grants awarded under this part shall include provisions assuring compliance with the Indian Civil Rights Act; prohibiting discriminatory distinctions among eligible Indian beneficiaries; and assuring the fair and uniform provision by the grantees of the services and assistance they provide to eligible Indian beneficiaries under such grants. Such procedures must include criteria by which eligible Indian beneficiaries will receive services, recordkeeping mechanisms adequate to verify the fairness and uniformity of services in cases of formal complaints, and an explanation of what rights will be afforded an individual pending the resolution of a complaint.

(b) Indian beneficiaries of the services to be rendered under a grant shall be afforded access to administrative or judicial bodies empowered to adjudicate complaints, claims, or grievances brought by such Indian beneficiaries against the grantee arising out of the performance of the grant.

§23.50 Service eligibility.

(a) Tribal government Indian child and family service programs. Any person meeting the definition of Indian, Indian child, Indian custodian, or Indian parent of any unmarried person

under the age of 18 as defined in § 23.2 is eligible for services provided under 25 U.S.C. 1931 of the Act. Tribal membership status shall be determined by tribal law, ordinance, or custom. The tribe may, under subpart C, extend services to nontribal family members related by marriage to tribal members, provided such services promote the intent and purposes of the Act. A tribe may also, within available resources, extend services under this part to individuals who are members of, or are eligible for membership in other Indian tribes, and who reside within the tribe's designated service area.

(b) Off-reservation Indian child and family service programs and agreements with the Secretary of Health and Human Services pursuant to 25 U.S.C. 1933. For purposes of eligibility for services provided under 25 U.S.C. 1932 and 1933 of the Act, any person meeting the definition of Indian, Indian child, Indian custodian, or Indian parent of any unmarried person under the age of 18 as defined in § 23.2, or the definition of Indian as defined in 25 U.S.C. 1603(c), shall be eligible for services. Tribal membership status shall be determined by tribal law, ordinance, or custom.

§ 23.51 Grant carry-over authority.

Unless restricted by appropriation, and contingent upon satisfactory program evaluations from the appropriate area or agency office for an existing program, grantees are authorized to carry over unliquidated grant funds which remain at the end of a budget period. Such funds may be carried over for a maximum period of two years beyond the initial grant funding period and must be utilized only for the intent, purpose and scope of the original grant. These carry-over grant funds shall not be reprogrammed into other appropriation activities or subactivities. Funds carried over into another fiscal year will be added to the grantee's new fiscal year funding amount.

§ 23.52 Grant suspension.

(a) When a grantee has materially failed to comply and remains out of compliance with the terms and conditions of the grant, the grants officer may, after reasonable notice to the grantee and the provision of requested technical assistance, suspend the grant. The notice preceding the suspension shall include the effective date of the suspension, the corrective measures necessary for reinstatement of the grant and, if there is no immediate threat to safety, a reasonable timeframe for corrective action prior to actual suspension.

(b) No obligation incurred by the grantee during the period of suspension shall be allowable under the suspended grant, except that the grants officer may at his/her discretion allow necessary and proper costs which the grantee could not reasonably avoid during the period of suspension if such costs would otherwise be allowable under the applicable cost principles.

(c) Appropriate adjustments to the payments under the suspended grant will be made either by withholding the payments or by not allowing the grantee credit for disbursements which the grantee may make in liquidation of unauthorized obligations the grantee incurs during the period of suspension.

(d) Suspension shall remain in effect until the grantee has taken corrective action to the satisfaction of the grants officer, or given assurances satisfactory to the grants officer that corrective action will be taken, or until the grants officer cancels the grant.

§ 23.53 Cancellation.

(a) The grants officer may cancel any grant, in whole or in part, at any time before the date of completion whenever it is determined that the grantee has:

(1) Materially failed to comply with the terms and conditions of the grant;

(2) Violated the rights as specified in § 23.49 or endangered the health, safety, or welfare of any person; or

(3) Been grossly negligent in, or has mismanaged the handling or use of funds provided under the grant.

(b) When it appears that cancellation of the grant will become necessary, the grants officer shall promptly notify the grantee in writing of this possibility. This written notice shall advise the grantee of the reason for the possible cancellation and the corrective action necessary to avoid cancellation. The grants officer shall also offer, and shall provide, if requested by the grantee,

any technical assistance which may be required to effect the corrective action. The grantee shall have 60 days in which to effect this corrective action before the grants officer provides notice of intent to cancel the grant as provided for in paragraph (c) of this section.

(c) Upon deciding to cancel for cause, the grants officer shall promptly notify the grantee in writing of that decision, the reason for the cancellation, and the effective date. The Area Director or his/her designated official shall also provide a hearing for the grantee before cancellation. However, the grants officer may immediately cancel the grant, upon notice to the grantee, if the grants officer determines that continuance of the grant poses an immediate threat to safety. In this event, the Area Director or his/her designated official shall provide a hearing for the grantee within 10 days of the cancellation.

(d) The hearing referred to in paragraph (c) of this section shall be conducted as follows:

(1) The grantee affected shall be notified, in writing, at least 10 days before the hearing. The notice should give the date, time, place, and purpose of the hearing.

(2) A written record of the hearing shall be made. The record shall include written statements submitted at the hearing or within five days following the hearing.

Subpart F—Appeals

§23.61 Appeals from decision or action by Agency Superintendent, Area Director or Grants Officer.

A grantee or prospective applicant may appeal any decision made or action taken by the Agency Superintendent, Area Director, or grants officer under subpart C or E of this part. Such an appeal shall be made to the Assistant Secretary who shall consider the appeal in accordance with 25 CFR 2.20 (c) through (e). Appeal procedures shall be as set out in part 2 of this chapter.

§23.62 Appeals from decision or action by Area Director under subpart D.

A grantee or applicant may appeal any decision made or action taken by the Area Director under subpart D that is alleged to be in violation of the U.S. Constitution, Federal statutes, or the regulations of this part. These appeals shall be filed with the Interior Board of Indian Appeals in accordance with 25 CFR 2.4 (e); 43 CFR 4.310 through 4.318 and 43 CFR 4.330 through 4.340. However, an applicant may not appeal a score assigned to its application or the amount of grant funds awarded.

§23.63 Appeals from inaction of official.

A person or persons whose interests are adversely affected, or whose ability to protect such interests is impeded by the failure of an official to act on a request to the official, may make the official's inaction the subject of an appeal under part 2 of this chapter.

Subpart G—Administrative Provisions

§23.71 Recordkeeping and information availability.

(a)(1) Any state court entering a final decree or adoptive order for any Indian child shall provide the Secretary or his/her designee within 30 days a copy of said decree or order, together with any information necessary to show:

(i) The Indian child's name, birthdate and tribal affiliation, pursuant to 25 U.S.C. 1951;

(ii) Names and addresses of the biological parents and the adoptive parents; and

(iii) Identity of any agency having relevant information relating to said adoptive placement.

(2) To assure and maintain confidentiality where the biological parent(s) have by affidavit requested that their identity remain confidential, a copy of such affidavit shall be provided to the Secretary or his/her designee. Information provided pursuant to 25 U.S.C. 1951(a) is not subject to the Freedom of Information Act (5 U.S.C. 552), as amended. The Secretary or his/her designee shall ensure that the confidentiality of such information is maintained. The address for transmittal of information required by 25 U.S.C. 1951(a) is: Chief, Division of Social Services, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop 310–SIB, Washington, DC 20240. The envelope

containing all such information should be marked ''Confidential.'' This address shall be sent to the highest court of appeal, the Attorney General and the Governor of each state. In some states, a state agency has been designated to be repository for all state court adoption information. Where such a system is operative, that agency may assume reporting responsibilities for the purposes of the Act.

(b) The Division of Social Services, Bureau of Indian Affairs, is authorized to receive all information and to maintain a central file on all state Indian adoptions. This file shall be confidential and only designated persons shall have access to it. Upon the request of an adopted Indian individual over the age of 18, the adoptive or foster parents of an Indian child, or an Indian tribe, the Division of Social Services shall disclose such information as may be necessary for purposes of tribal enrollment or determining any rights or benefits associated with tribal membership, except the names of the biological parents where an affidavit of confidentiality has been filed, to those persons eligible under the Act to request such information. The chief tribal enrollment officer of the BIA is authorized to disclose enrollment information relating to an adopted Indian child where the biological parents have by affidavit requested anonymity. In such cases, the chief tribal enrollment officer shall certify the child's tribe, and, where the information warrants, that the child's parentage and other circumstances entitle the child to enrollment consideration under the criteria established by the tribe.

Subpart H—Assistance to State Courts

§ 23.81 Assistance in identifying witnesses.

Upon the request of a party in an involuntary Indian child custody proceeding or of a court, the Secretary or his/her designee shall assist in identifying qualified expert witnesses. Such requests for assistance shall be sent to the Area Director designated in § 23.11(c). The BIA is not obligated to pay for the services of such expert witnesses.

§ 23.82 Assistance in identifying language interpreters.

Upon the request of a party in an Indian child custody proceeding or of a court, the Secretary or his/her designee shall assist in identifying language interpreters. Such requests for assistance should be sent to the Area Director designated in § 23.11(c). The BIA is not obligated to pay for the services of such language interpreters.

§ 23.83 Assistance in locating biological parents of Indian child after termination of adoption.

Upon the request of a child placement agency, the court or an Indian tribe, the Secretary or his/her designee shall assist in locating the biological parents or prior Indian custodians of an adopted Indian child whose adoption has been terminated pursuant to 25 U.S.C. 1914. Such requests for assistance should be sent to the Area Director designated in § 23.11(c).

PART 26—EMPLOYMENT ASSISTANCE FOR ADULT INDIANS

Subpart A—Definitions, Scope of the Employment Assistance Program and Information Collection

Sec.
26.1 Definitions.
26.2 Scope of the Employment Assistance Program.
26.3 Information collection.

Subpart B—Administrative Procedures

26.4 Filing applications.
26.5 Selection of applicants.
26.6 Program services and client participation.
26.7 Financial assistance for program participants.

Subpart C—Appeals

26.8 Appeals.

AUTHORITY: 25 U.S.C. 13.

SOURCE: 49 FR 2098, Jan. 18, 1984, unless otherwise noted.

Subpart A—Definitions, Scope of the Employment Assistance Program and Information Collection

§ 26.1 Definitions.

(a) *Agency office* means the current organization unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian tribes.

(b) *Appeal* means a written request for correction of an action or decision claimed to violate a person's legal rights or privileges as provided in part 2 of this chapter.

(c) *Applicant* means an individual applying under this part.

(d) *Application* means the process through which a request is made for assistance or services.

(e) *Area Director* means the Bureau official in charge of an Area Office.

(f) *Contract office* means the office established by a tribe or tribes who have a contract to administer the Employment Assistance Program.

(g) *Indian* means any person of Indian or Alaska native descent who is an enrolled member of any of those tribes listed or eligible to be listed in the FEDERAL REGISTER pursuant to 25 CFR 83.6 as recognized by and receiving services from the Bureau of Indian Affairs or a descendant of one-fourth degree or more Indian blood of an enrolled member; and any person not a member of one of the listed or eligible to be listed tribes who possesses at least one-half degree of Indian blood which is not derived from a tribe whose relationship is terminated by an Act of Congress.

(h) *Indian tribe* means any Indian tribe, band, nation or other organized group or community including any Alaska Native Village which is recognized by the Secretary of the Interior as having special rights and responsibilities and is recognized as eligible for the services provided by the United States to Indians because of their status as Indians.

(i) *Near reservation* means those areas or communities adjacent or contiguous to reservations which are designated by the Assistant Secretary upon recommendation of the local Bureau superintendent, which recommendation shall be based upon agreement with the tribal governing body of those reservations, as locales appropriate for the extension of financial and/or social services, on the basis of such general criteria as:

(1) Number of Indian people native to the reservation residing in the area,

(2) Geographical proximity of the area to the reservation, and

(3) Administrative feasibility of providing an adequate level of services to the area. The Assistant Secretary shall designate each area and publish the designations in the FEDERAL REGISTER.

(j) *Reservation* means any bounded geographical area established or created by treaty, statute, executive order or interpreted by court decision and over which a federally recognized Indian Tribal entity may exercise certain jurisdiction.

(k) *Superintendent* means the Superintendent or Officer in Charge of any one of the Agency offices of the Bureau of Indian Affairs or his/her authorized representative.

(l) *Tribal governing body* means the recognized entity empowered to exercise the governmental authority of a federally recognized tribe.

§ 26.2 Scope of the Employment Assistance Program.

The purpose of the Employment Assistance Program is to assist Indian people who have a job skill to obtain and retain permanent employment. Within that framework, the program provides services to eligible Indians, as provided in § 26.5, including vocational counseling and employment services on reservations and at other home areas, in communities near reservations and in off-reservation areas. Support services are also included, as provided in § 26.6.

§ 26.3 Information collection.

The information collection requirements contained in §§ 26.4 and 26.6 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h) and are assigned clearance numbers 1076–0062 and 1076–0061. Information necessary for an application for employment assistance will be submitted on an application form

which may be obtained at a local Bureau of Indian Affairs Agency or tribal program contractor office. This information is being collected for the purpose of applying for Federal assistance. The information will be used to determine if an Indian person is eligible to participate in this program and to determine the amount of assistance needed. The obligation to respond is a requirement to obtain the benefits.

Subpart B—Administrative Procedures

§ 26.4 Filing applications.

(a) Application for Employment Assistance services must be filed at Bureau of Indian Affairs Agency offices, or at facilities under contract with the Bureau or contract offices which are located on or near reservations or other geographic areas of eligibility. Applications are approved by the Agency Superintendent or designated contractor. An eligible applicant should apply, be funded and receive services at the servicing office nearest to his/her residence at the time of application.

(b) For clarity and uniformity, application forms used will be in accordance with the requirements of the Paperwork Reduction Act, section 3504(h) of Pub. L. 96–511.

§ 26.5 Selection of applicants.

(a) Applicants must be adult Indians residing on or near Indian reservations and demonstrate a need for employment services.

(b) An applicant must be unemployed or underemployed in order to receive employment services.

(c) Selection of applicants shall be made without regard to sex or marital status.

(d) Only those applicants who declare a desire and intent to accept and retain full time permanent employment at the employment location chosen shall be selected, with the exception of those individuals participating in the temporary summer placement program as provided in § 26.6(b)(1).

(e) Repeat employment services involving expenditure of grant funds are to be determined on an individual basis, considering ability, prior performance, need and motivation. No client shall automatically be entitled to funded repeat services. No more than two (2) funded repeat services for a client shall be allowed. Exceptions may be made if additional funded services not provided would create extreme hardship on the client. Applications are to be submitted with proper justification for repeat service to the Area Director for approval or disapproval.

§ 26.6 Program services and client participation.

(a) When a request is made for employment services, the applicant shall be offered assistance to assess his/her job skills and work experience and to relate these to available employment opportunities. In many cases, applicants for placement services will already possess training skills, and/or experience sufficient for entry into job placement. In other cases, applicants may be encouraged to consider further education or training options as a preliminary to permanent employment. In any case, vocational counseling appropriate to the individual situation shall be made available.

(b) Services may be provided either with or without the expenditure of financial grants depending upon the type of service requested and the need for financial assistance. Funds shall not be provided to finance temporary employment except for the following:

(1) High school students who are at least 17 years of age or college students participating in summer placement programs to gain work experience and temporary income may receive limited funding as needed to enable such persons to secure and hold summer jobs. This special service will not count against the number of services allowed under § 26.5(e).

(2) Persons who have moved to an off-reservation area for permanent employment, through services of the Employment Assistance program, may at times be required to accept temporary employment until permanent employment is available. Such persons may receive funds as needed within established limitations and justifiable circumstances, as allowed by the Area Director, until permanent employment is found and/or the need is met.

(c) Permanent employment shall normally be defined as employment which is generally anticipated to be of one year or more in duration. Employment in the construction or other trades where moving from one job to another is generally required of persons engaged in such occupations shall be considered as permanent employment.

(d) In those cases where applicants apply and are selected for employment services in off-reservation urban locations, a variety of services may be provided, based upon individual client needs and requests for assistance. These may include advice in rental of housing, shopping, money management, community adjustment, counseling, applying for and seeking employment, and emergency financial assistance for up to six months from the date of entry into this program. Continuing non-financial assistance, as needed, shall remain indefinitely available.

(e) Assistance as needed may be provided to enable clients who move for employment to an off-reservation urban or non-urban area to accept a specific job offer. In such cases, however, transportation or financial assistance may be provided only after confirmation has been obtained from the employer, giving details of employment, including the following:

(1) Job title,
(2) Beginning wage,
(3) Date to start work,
(4) First payday,
(5) First full payday, and
(6) A statement that the job is anticipated to be of a permanent nature.

§ 26.7 Financial assistance for program participants.

(a) Individuals or families with a family member participating in the Employment Assistance program may be granted financial assistance, as needed, based upon rates established by the Area Director for the respective areas or jurisdictions within those areas.

(b) Not more than thirty (30) percent of the funds appropriated for any program year may be used to pay for the costs of administration. Administrative costs include salaries and fringe benefits of direct program administrative positions such as program director or program officer, program/financial analyst, labor market analyst, clerical personnel, travel costs, materials, supplies, equipment, space and utilities. The remaining seventy (70) percent of funds available may be used for transportation and subsistence enroute to employment location; subsistence for one month or until the first paycheck from employment is received; emergency assistance is allowed where verified emergencies justify such grants and must have Area Director approval; and supportive services. Supportive services includes tools for employment, initial union dues, transportation of household effects, security and safety deposits, personal appearance and housewares, child care, and costs of employment counselors engaged in providing services to applicants (salaries, fringe benefits and travel costs).

(c) Marital status of applicants is not a consideration for determining eligibility for services, but this factor is a consideration for determining appropriate subsistence grants. Proof of a legal relationship requiring support shall be required as a basis for application of family subsistence rates. In the case of married persons, proof of marriage shall be required to satisfy this requirement.

(d) Financial assistance shall not be used to supplement the income of a person already employed.

Subpart C—Appeals

§ 26.8 Appeals.

The decision of any Bureau official under this part can be appealed pursuant to the procedures in 25 CFR part 2.

PART 27—VOCATIONAL TRAINING FOR ADULT INDIANS

Subpart A—Definitions, Scope of the Vocational Training Program and Information Collection

Sec.
27.1 Definitions.
27.2 Scope of the vocational training program.
27.3 Information collection.

Subpart B—Administrative Procedures

27.4 Filing applications.

27.5 Selection of applicants.
27.6 Satisfactory progress during training.
27.7 Approval of courses for vocational training at institutions.
27.8 Approval of apprenticeship training.
27.9 Approval of on-the-job training.
27.10 Financial assistance for trainees.
27.11 Contracts and agreements.

Subpart C—Appeals

27.12 Appeals.

AUTHORITY: Sec. 1, Pub. L. 84–959, 70 Stat. 986 as amended by Pub. L. 88–230, 77 Stat. 471 (25 U.S.C. 309).

SOURCE: 49 FR 2101, Jan. 18, 1984, unless otherwise noted.

Subpart A—Definitions, Scope of the Vocational Training Program and Information Collection

§ 27.1 Definitions.

(a) *Agency office* means the current organization unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian tribes.

(b) *Appeal* means a written request for correction of an action or decision claimed to violate a person's legal rights or privileges as provided in part 2 of this chapter.

(c) *Applicant* means an individual applying under this part.

(d) *Application* means the process through which a request is made for assistance or services.

(e) *Area Director* means the Bureau official in charge of an Area Office or his/her authorized representative.

(f) *Assistant Secretary* means the Assistant Secretary of the Interior for Indian Affairs or his/her authorized representative.

(g) *Contract office* means the office established by a tribe or tribes who have a contract to administer the adult vocational training program.

(h) *Full time* institutional training is:

(1) An institutional trade or technical course offered on a clock-hour basis below the college level, involving shop practices as an integral part thereof when a minimum of thirty (30) hours per week of attendance is required with not more than 2½ hours of rest periods per week allowed.

(2) An institutional vocational course offered on a clock-hour basis below the college level in which theoretical or classroom instruction predominates when a minimum of twenty-five (25) hours per week net of instruction is required, or

(3) An institutional undergraduate vocational course offered by a college or university on a quarter or semester-hour basis when a minimum of twelve (12) semester credit hours or its equivalent is required.

(i) *Indian* means any person of Indian or Alaska native descent who is an enrolled member of any of those tribes listed or eligible to be listed in the FEDERAL REGISTER pursuant to 25 CFR 83.6 as recognized by and receiving services from the Bureau of Indian Affairs or a descendant of one-fourth degree or more Indian blood of an enrolled member and any person not a member of one of the listed or eligible to be listed tribes who possesses at least one-half degree of Indian blood which is not derived from a tribe whose relationship is terminated by an Act of Congress.

(j) *Indian tribe* means any Indian tribe, band, nation or other organized group or community, including any Alaska native village, which is recognized by the Secretary of the Interior as having special rights and responsibilities and is recognized as eligible for the services provided by the United States to Indians because of their status as Indians.

(k) *Near reservation* means those areas or communities adjacent or contiguous to reservations which are designated by the Assistant Secretary upon recommendation of the local Bureau superintendent, which recommendation shall be based upon agreement with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as:

(1) Number of Indian people native to the reservation residing in the area,

(2) Geographical proximity of the area to the reservation, and

(3) Administrative feasibility of providing an adequate level of services to the area. The Assistant Secretary shall

designate each area and publish the designations in the FEDERAL REGISTER.

(l) *Reservation* means any bounded geographical area established or created by treaty, statute, executive order or as interpreted by court decision and over which a Federally recognized Indian tribal entity may exercise certain jurisdiction.

(m) *Superintendent* means the Superintendent or Officer in Charge of any of the Agency offices of the Bureau of Indian Affairs or his/her authorized representative.

(n) *Tribal governing body* means the recognized entity empowered to exercise the governmental authority of a Federally recognized tribe.

§ 27.2 Scope of the vocational training program.

The purpose of the vocational training program is to assist Indian people to acquire the job skills necessary for full time satisfactory employment. Within that framework, the program provides testing, vocational counseling or guidance to assist program participants to make career choices relating personal assets to training option and availability of jobs in the labor market. The program provides for full time institutional training in any vocational or trade school as provided in § 27.7. Apprenticeship and on-the-job training are also provided. Institutional, apprenticeship, or on-the-job training courses shall not exceed twenty-four (24) months in length, with the exception that Registered Nurses training may be for periods not to exceed thirty-six (36) months. Individual program recipients may not receive more than twenty-four (24) months of full-time training, except that Registered Nursing students may receive not more than thirty-six (36) months of training.

§ 27.3 Information collection.

The information collection requirements contained in §§ 27.4, 27.6 and 27.9 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h) and are assigned clearance numbers 1076–0062, 1076–0063 and 1076–0069. Information necessary for an application for vocational training assistance will be submitted on an application form which may be obtained at a local Bureau of Indian Affairs Agency or tribal program contractor office. This information is being collected for the purpose of applying for Federal assistance. The information will be used to determine if an Indian individual is eligible to participate in this program and to determine the amount of assistance needed. The obligation to respond is a requirement to obtain the benefits.

Subpart B—Administrative Procedures

§ 27.4 Filing applications.

(a) Applications for adult vocational training services must be filed at Bureau of Indian Affairs agency offices, or at facilities under contract with the Bureau or contract offices located on or near reservations or other geographic areas of eligibility. Applications are approved by the Agency Superintendent or designated contractor. An eligible applicant should apply, be funded and receive services at the servicing office nearest to his/her residence at the time of application.

(b) For clarity and uniformity, application forms used will be in accordance with the requirements of the Paperwork Reduction Act, section 3504(h) of Pub. L. 96–511.

§ 27.5 Selection of applicants.

(a) Applicants must be adult Indians residing on or near Indian reservations.

(b) Eligible individuals shall be at least eighteen (18) years of age, except that high school graduates shall be eligible at the age of seventeen (17) years. Also, while the program is designed primarily for persons between the ages of eighteen (18) and thirty-five (35), persons over the age of thirty-five (35) shall be eligible, assuming training and permanent employment to be otherwise feasible in terms of health and physical capability.

(c) An applicant must be in need of training in order to obtain reasonable and satisfactory employment or is underemployed and without additional training would result in extreme hardship for the applicant, and is in need of financial assistance in order to obtain such training. It must also be feasible for the applicant to pursue training.

(d) Selection of applicants shall be made without regard to sex or marital status, providing they meet the requirements of paragraphs (a), (b), and (c) of this section. Non-Indian spouses shall not be eligible for training.

(e) No more than two (2) repeat training services will be allowed. Repeat training services will be on a lower priority than the initial service and will be determined on an individual basis, considering need, ability, prior performance and present motivation of the applicant. In order to be in need of repeat institutional training, an applicant must be unemployed, underemployed, or unable to work in his/her primary occupation due to physical or other disabilities. Time spent in on-the-job training programs will be deducted from the maximum of institutional training eligibility.

(f) Only those applicants who willingly declare intent to accept full time employment as soon as possible after completion of training shall be selected. Plans may subsequently change, but the intent of the training program is preparation for employment, and this must be the initial intent of program participants. The program is not meant to serve as a preliminary to immediate further education.

§ 27.6 Satisfactory progress during training.

An individual who enters training pursuant to the provisions of this part is required to make satisfactory progress in training. Individuals in institutional vocational training courses are required to give evidence of progress by authorizing the institution attended to provide grade and/or progress reports to the appropriate Bureau of Indian Affairs or contract office. Program participants shall maintain a reasonable standard of conduct. Failure to meet these requirements due to reasons within the trainee's control may result in termination of training benefits.

§ 27.7 Approval of courses for vocational training at institutions.

(a) A course of vocational training at any institution, public or private, offering vocational training may be approved by the Assistance Secretary; *provided:*

(1) The institution is accredited by a recognized national regional accrediting association; or

(2) The institution is approved for training by a state agency authorized to make such approvals; and

(3) It is determined that there is reasonable certainty of employment for graduates of the institution in their respective fields of training.

(b) Cooperative education (a combination of classroom theory with related practical job experience) is considered as valuable learning experience and is specifically allowed and encouraged.

(c) Vocational training courses offered through Indian tribal governments need not be accredited but must show reasonable expectation of leading to employment and be approved by the Area Director.

§ 27.8 Approval of apprenticeship training.

A program of apprenticeship training may be approved when such training:

(a) Is offered by a corporation or association which has furnished such training to bona fide apprentices for at least one year preceding participation in this program;

(b) Is under the supervision of a State apprenticeship agency, a State Apprenticeship Council, or the Federal Apprenticeship Training Services;

(c) Leads to an occupation which requires the use of skills that normally are learned through training on the job and employment which is based upon training on the job rather than upon such elements as length of service, normal turnover, personality, and other personal characteristics; and

(d) Is identified expressly as apprenticeship training by the establishment offering it.

§ 27.9 Approval of on-the-job training.

(a) On-the-job training contracts shall be approved only by the official to whom such authority has been delegated in the 10 BIAM.

(b) On-the-job training may be approved when such training is offered by a corporation, small business, association, tribe or tribal enterprise which

provides an on-the-job training program offering definite potential for skilled permanent employment.

(c) Yearly on-the-job training contractual agreements with a specific contractor shall not be renewed beyond the second year without review and written approval from the Assistant Secretary-Indian Affairs. Extension of contracts exceeding two years will be based upon a contractors demonstrated expansion of the enterprise, need for additional trainees, and placement of trainees completing the program.

(d) Reimbursement to the on-the-job training contractor may include one-half of the hourly wage paid during the training period with the contractor paying the other half. The hourly rate must be at least the established minimum wage under the Fair Labor Standards Act of 1938, as amended.

§27.10 Financial assistance for trainees.

(a) Applicants entering full-time training under this part may be granted financial assistance as needed, based upon rates established by the Area Director for the respective areas, or jurisdictions within those areas. Trainees may be assisted to secure educational grants from other sources for which they qualify. Such income shall be considered in computing amounts of financial assistance to be provided by the Bureau of Indian Affairs. Marital status of trainees is not a consideration for determining eligibility for training, but this factor is a consideration in determining appropriate subsistence grants. Proof of a legal relationship requiring support shall be required as a basis for application of family subsistence rates. In the case of married persons, proof of marriage shall be required to satisfy this requirement. Financial assistance may be provided for transportation and subsistence enroute to training; tuition and related training costs; subsistence while in training; emergency assistance is allowed where verified emergencies justify such grants and must have Area Director approval; and supportive services while in training. Supportive services includes tools for employment, initial union dues, transportation of household effects, security and safety deposits, personal appearance and housewares, child care, and cost of vocational training counselors engaged in providing services to trainees (salaries, fringe benefits and travel costs).

(b) Not more than thirty (30) percent of the funds appropriated for any program year may be used to pay for the costs of administration. Administrative costs include salaries and fringe benefits of direct program administrative positions such as program director or program officer, program/financial analyst, labor market analyst, clerical personnel, travel costs, materials, supplies, equipment, space and utilities.

§27.11 Contracts and agreements.

Training facilities and services required for programs of vocational training may be arranged through contracts or agreements with agencies, establishments or organizations. These may include:

(a) Indian tribal governing bodies,

(b) Appropriate Federal, State or local government agencies,

(c) Public or private schools which have a recognized reputation in vocational education as successfully obtaining employment for graduates in the fields of training approved by the Assistant Secretary or his/her authorized representative for purposes of the program,

(d) Educational firms to operate residential training centers, or

(e) Corporations and associations or small business establishments with apprenticeship or on-the-job training programs leading to skilled employment.

Subpart C—Appeals

§27.12 Appeals.

The decisions of any Bureau official under this part can be appealed pursuant to the procedures in 25 CFR part 2.

SUBCHAPTER E—EDUCATION

PART 31—FEDERAL SCHOOLS FOR INDIANS

Sec.
31.0 Definitions.
31.1 Enrollment in Federal schools.
31.2 Use of Federal school facilities.
31.3 Non-Indian pupils in Indian schools.
31.4 Compulsory attendance.
31.5 Consent for transfer.
31.6 Coercion prohibited.
31.7 Handling of student funds in Federal school facilities.

AUTHORITY: Sec. 1, 41 Stat. 410; 25 U.S.C. 282, unless otherwise noted.

SOURCE: 22 FR 10533, Dec. 24, 1957, unless otherwise noted.

§ 31.0 Definitions.

As used in this part:

(a) *School district* means the local unit of school administration as defined by the laws of the State in which it is located.

(b) *Cooperative school* means a school operated under a cooperative agreement between a school district and the Bureau of Indian Affairs in conformance with State and Federal school laws and regulations.

(35 Stat. 72, 25 U.S.C. 295)

[33 FR 6472, Apr. 27, 1968]

§ 31.1 Enrollment in Federal schools.

(a) Enrollment in Bureau-operated schools is available to children of one-fourth or more degree of Indian blood reside within the exterior boundaries of Indian reservations under the jurisdiction of the Bureau of Indian Affairs or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs except when there are other appropriate school facilities available to them as hereinafter provided in paragraph (c) of this section.

(b) Enrollment in Bureau-operated boarding schools may also be available to children of one-fourth or more degree of Indian blood who reside near the reservation when a denial of such enrollment would have a direct effect upon Bureau programs within the reservation.

(c) Children of Federal employees, whether Indian or non-Indian, are deemed eligible on the same basis as other eligible students for enrollment at facilities provided by the school district (including cooperative schools) wherein they reside.

(35 Stat. 72, 25 U.S.C. 295)

[33 FR 6473, Apr. 27, 1968; 33 FR 6968, May 9, 1968]

§ 31.2 Use of Federal school facilities.

Federal Indian school facilities may be used for community activities and for adult education activities upon approval by the superintendent or officer in charge.

§ 31.3 Non-Indian pupils in Indian schools.

Indian and non-Indian children who are not eligible for enrollment in Bureau-operated schools under § 31.1 may be enrolled in such schools under the following conditions:

(a) In boarding schools upon payment of tuition fees, which shall not exceed the per capita cost of maintenance in the school attended, when their presence will not exclude Indian pupils eligible under § 31.1.

(b) In day schools in areas where there are no other adequate free school facilities available, tuition fees may be charged for such enrollment at the discretion of the superintendent or other officer in charge provided such fees shall not exceed the tuition fees allowed or charged by the State or county in which such school is located for the children admitted in the public schools of such State or county.

(34 Stat. 1018, 35 Stat. 783, 40 Stat. 564; 25 U.S.C. 288, 289, 297)

[29 FR 5828, May 2, 1964]

§ 31.4 Compulsory attendance.

Compulsory school attendance of Indian children is provided for by law.

(60 Stat. 962; 25 U.S.C. 231)

CROSS REFERENCE: For penalties for the failure of Indians to send children to school and for contributing to the delinquency of minors, see §§ 11.65 and 11.66 of this chapter.

§ 31.5 Consent for transfer.

Consent of the parents or next of kin, given before the superintendent or other duly authorized person, must be obtained before an Indian child is sent to a school beyond the limits of the State or Territory in which the reservation is located.

(Sec. 1, 28 Stat. 906; 25 U.S.C. 286)

§ 31.6 Coercion prohibited.

There shall be no coercion of children in the matter of transfers from one school to another, but voluntary enrollment should be effected through maintenance of Federal Indian schools or programs which suit the needs and interests of the areas in which they are located.

(Sec. 1, 29 Stat. 348; 25 U.S.C. 287)

§ 31.7 Handling of student funds in Federal school facilities.

The Secretary or his authorized representative may authorize officials and employees of the Bureau of Indian Affairs to accept and to disburse deposits of funds of students and student activity associations in schools operated by the Bureau in accordance with the purposes of such deposits. The following steps shall be taken to safeguard these funds:

(a) A written plan of operation shall be developed by the membership of each student activity group. The plan of operation subject to the approval of authorized officials shall outline procedures and provide for a system of accounting for the student funds commensurate with the age and grade level of the students yet adequate for financial control purposes and shall stipulate the maximum operating capital of activity.

(b) Appropriate safekeeping facilities shall be provided for all student personal and group funds and for the accounting or bookkeeping records.

(c) Employees handling student funds in cumulative amounts in excess of $100 shall be covered by a comprehensive fidelity bond the penal sum of which shall be appropriately related to fund amounts handled.

(d) Student funds accumulated in excess of the amount authorized for operating purposes by the plan of operation shall be deposited in federally insured depositories.

(e) Periodic administrative inspections and financial audit of student fund operations shall be conducted by authorized Bureau personnel.

[26 FR 10637, Nov. 14, 1961]

PART 32—INDIAN EDUCATION POLICIES

Sec.
32.1 Purpose and scope.
32.2 Definitions.
32.3 Mission statement.
32.4 Policies.
32.5 Evaluation of implementation of Pub. L. 95–561.

AUTHORITY: Secs. 1130 and 1133 of Title XI of the Education Amendments of 1978 (92 Stat. 2143, 2321 and 2325, Pub. L. 95–561; 25 U.S.C. 2010 and 2013).

SOURCE: 44 FR 58098, Oct. 9, 1979, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 32.1 Purpose and scope.

The purpose of this part is to state the policies to be followed by all schools and education programs under the jurisdiction of the Bureau of Indian Affairs. Contract schools operated by Indian Tribes or Alaska Native entities may develop their independent policies, consistent with contractual obligations, or adhere to these. The adherence to the appropriate policies shall reflect the best interests of the student, the Federal government, the Tribes and Alaska Native entities, and shall be based on educationally sound judgment.

§ 32.2 Definitions.

As used in this part, the term:

(a) *Agency School Board* means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Director in consultation with the affected Tribes or Alaska Native entities except that, in agencies serving a single school, the school board of such school shall fulfill these duties.

(b) *Alaska Native* means an Indian, Eskimo, or Aleut who is a member of an Alaska Native entity.

(c) *Alaska Native Entity* means any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.).

(d) *Alaska Native Village* means any Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 689; 43 U.S.C. 1602 (c)).

(e) *Boarding school*, hereinafter referred to as *residential school*, means a Bureau school offering residential care and support services as well as an academic program.

(f) *Bureau* means the Bureau of Indian Affairs of the Department of the Interior.

(g) *Consultation* means a conferring process with Tribes, Alaska Native entities, and Tribal organizations on a periodic and systematic basis in which the Bureau and Department officials listen to and give effect, to the extent they can, to the views of these entities.

(h) *Contract school* means a school (other than a public school) which is Tribally operated and aided by a financial assistance contract with the Bureau.

(i) *Day school* means a Bureau school offering an academic program and certain support services such as counseling, food, transportation, etc., but excluding residential care.

(j) *Director* means the Director, Office of Indian Education Programs, Bureau of Indian Affairs.

(k) *Early childhood education* means comprehensive education activities with continuity of educational approach for children ages 0–8 years and their familes, appropriate for their age, development, language and culture which supplement and support usual family responsibilities for child growth and development. They are coordinated with, but do not supplant, existing educational, health, nutritional, social and other necessary services.

(l) *Exceptional Education Programs* mean the provision of services to those children who are identified as handicapped and have been found to meet the criteria of handicapped as defined in Pub. L. 94–142, and programs for gifted and talented students.

(m) *Indian* means a member of an Indian Tribe.

(n) *Indian Organization* means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian Tribe or Tribes, or a majority of whose members are members of federally recognized Indian Tribes.

(o) *Indian Tribe* or *Tribe* means any Indian tribe, band, nation, rancheria, pueblo, colony, or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(p) *Local school board*, when used with respect to a Bureau school, means a body chosen in accordance with the laws of the Tribe or Alaska Native entity to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school, except that in schools serving a substantial number of students from different Tribes or Alaska Native entities the members shall be appointed by the governing bodies of the Tribes and entities affected; and, the number of such members shall be determined by the Director in consultation with the affected Tribes and entities.

(q) *Post-secondary* education means any education program beyond the age of compulsory education, including higher education, career, vocational, and technical.

(r) *Tribal Organization* means an organization composed of or duly representing Tribal governments which may be national or regional in scope and function.

§ 32.3 Mission statement.

Recognizing the special rights of Indian Tribes and Alaska Native entities and the unique government-to-government relationship of Indian Tribes and Alaska Native villages with the Federal Government as affirmed by the United States Constitution, U.S. Supreme Court decisions, treaties, Federal statutes, and Executive Orders, and as set out in the Congressional declaration in sections 2 and 3 of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638; 88 Stat. 2203; 25 U.S.C. 450 and 450a), it is the responsibility and goal of the Federal

government to provide comprehensive education programs and services for Indians and Alaska Natives. As acknowledged in section 5 of the Indian Child Welfare Act of 1978 (Pub. L. 95–608; 92 Stat. 3069; 25 U.S.C. 1901), in the Federal Government's protection and preservation of Indian Tribes and Alaska Native villages and their resources, there is no resource more vital to such Tribes and villages than their young people and the Federal Government has a direct interest, as trustee, in protecting Indian and Alaska Native children, including their education. The mission of the Bureau of Indian Affairs, Office of Indian Education Programs, is to provide quality education opportunities from early childhood through life in accordance with the Tribes' needs for cultural and economic well-being in keeping with the wide diversity of Indian Tribes and Alaska Native villages as distinct cultural and governmental entities. The Bureau shall manifest consideration of the whole person, taking into account the spiritual, mental, physical and cultural aspects of the person within family and Tribal or Alaska Native village contexts.

§ 32.4 Policies.

In carrying out its Education mission, the Assistant Secretary for Indian Affairs through the Director shall:

(a) *Policy making.* (1) Assure that no new policy shall be established nor any existing policy changed or modified without consultation with affected Tribes and Alaska Native Government entities.

(2) Be guided in policy formulation and funding priorities, including the proposing and awarding of contracts and grants, by periodic and systematic consultation with governing bodies of Tribes and Alaska Native entities.

(3) Ensure that Indian Tribes and Alaska Native entities fully exercise self-determination and control in planning, priority-setting, development, management, operation, staffing and evaluation in all aspects of the education process.

(4) Ensure that each agency or local school board shall be authorized and empowered to function as the policy making body for the school, consistent with the authority granted by the tribes or Alaska Native entity(ies) served by the school(s).

(b) *Student rights.* Ensure the constitutional, statutory, civil and human rights of all Indian and Alaska Native students, and respect the role of Tribal judicial systems where appropriate including, for example, ensuring that students have the right to be free from cruel and unusual punishment and that all disciplinary procedures shall be consistent with appropriate customs and practices of the appropriate Indian Tribe or Alaska Native village.

(c) *Equity funding.* Assure that resources for all education programs are equitably distributed for the benefit of all Indian and Alaska Native students, taking into account special educational needs where they exist, as further described in part 39 of this subchapter.

(d) *Direction of programs.* Ensure that the education function be structured in such a manner that all matters relating to the operation of education programs be administered by or be under the direction of education personnel.

(e) *Respect for family.* Promote, respect and defend the cohesiveness and integrity of the family, and Tribal and Alaska Native community, as they relate to the educational and social prerogatives of the Tribes and Alaska Native entities.

(f) *Religious freedom.* Promote and respect the right to cultural practices and religious freedom for all students, consistent with Tribal and Alaska Native entities' wishes and with the provisions of the American Indian Religious Freedom Act (92 Stat. 469; Pub. L. 95–341; 42 U.S.C. 1996).

(g) *Tribal rights regarding governing bodies and planning.* (1) Develop in consultation with Tribes and Alaska Native entities a plan to include their direct involvement in short and long-range planning of Bureau operated post-secondary schools through the formation of policy making governing boards.

(2) Encourage and defend the right of the Tribes and Alaska Native entities to govern their own internal affairs in all matters relating to education, and their right to determine the equitable

and appropriate composition of governing boards at Bureau off-reservation and post-secondary schools.

(h) *Multilingual education.* Provide for a comprehensive multicultural and multilingual educational program including the production and use of instructional materials, culturally appropriate methodologies and teaching and learning strategies that will reinforce, preserve and maintain Indian and Alaska Native languages, cultures, and histories which school boards, Tribes and Alaska Native entities may utilize at their discretion.

(i) *Choice of school.* Afford Indian and Alaska Native students the opportunity to attend local day schools and other schools of choice and the option to attend boarding schools when the student and parent or guardian determine it is in the student's best interest and consistent with the provisions of the Indian Child Welfare Act of 1978 (Pub. L. 95–608) except that, residential schools shall not be used as substitutes for providing adequate local family social services. Each school shall establish its attendance area in cooperation with neighboring schools.

(j) *Tribal education plans.* Assist Tribes and Alaska Native entities at their request in the development of Departments of Education, education codes, and comprehensive education plans.

(k) *Advocacy and coordination.* (1) Serve as an advocate for Indian Tribes and Alaska Native entities in education matters before the Federal, State and local governments.

(2) Assume an assertive role in coordinating comprehensive support for Indian and Alaska Native students internally and from other agencies in education, mental and physical health, juvenile justice, job training, including apprenticeship programs and other related Federal, State and local programs and services.

(3) Serve as an advocate and carry out responsibilities for Indian and Alaska Native students in public and other non-Bureau operated schools consistent with the wishes of the appropriate Indian Tribes and Alaska Native entities, particularly in regard to Impact Aid (Pub. L. 81–874), Johnson-O'Malley, and all Elementary and Secondary Education Act programs.

(l) *Student assessment.* Establish and maintain a program of research and development to provide accurate and culturally specific assessment instruments to measure student performance in cooperation with Tribes and Alaska Native entities.

(m) *Recruitment of Indians.* Adopt procedures to insure that qualified Indian and Alaska Native educators are recruited for positions appropriate to their cultural background and qualifications.

(n) *Priorities in contracts and grants.* Provide financial support through contracts, grants or other funding mechanisms with first priority given to the Tribes and Alaska Native entities, Tribal organizations, Tribally controlled community colleges, and Indian or Alaska Native professional or technical assistance organizations which have the sanction of the benefitting Tribes and Alaska Native entities.

(o) *Community school concept.* Promote the community school concept by encouraging year around multi-use of educational facilities, equipment and services for Tribal, Alaska Native village, and community development.

(p) *Education close to home.* Provide day and residential educational services as close to an Indian or Alaska Native student's home as possible, except when a student elects to attend a school elsewhere for specialized curricular offerings or services.

(q) *Tribal notification and involvement and program flexibility.* (1) Notify Indian Tribes and Alaska Native entities of proposed, pending or final Federal legislation, appropriations, Solicitor's and Attorney General's opinions and court decisions affecting Indian and Alaska Native education for the purposes of information and consultation, providing them ready access at the local level to all evaluations, data records, reports and other relevant information, consistent with the provisions of the Privacy and Freedom of Information Acts.

(2) Implement rules, regulations, procedures, practices, and standards to insure flexibility in the exercise of local Tribal or Alaska Native village options, and provide for input in periodic reviews, evaluations, and revisions to

meet changing needs and circumstances.

(r) *Career and higher education.* (1) Ensure to the extent possible that all students who choose to pursue career and post-secondary education, including but not limited to, undergraduate and graduate programs, or preparation for skilled trades, receive adequate academic or other preparation, at the schools of their choice, assuring that students are provided adequate support services to enable them to meet their educational goals.

(2) Extend to Tribes and Alaska Native entities the prerogative of determining those critical professions and fields of study in post-secondary education which are of the highest priority to meet their economic and cultural goals.

(s) *Planning, maintenance and use of facilities.* (1) Ensure that the needs of the students and Tribal or Alaska Native community will receive first priority in the planning, design, construction, operation and maintenance of Bureau schools and residential facilities, rather than other considerations, such as ease of maintenance, and that these facilities assure a supportive environment for learning, living and recreation.

(2) Maintain all school and residential facilities to meet appropriate Tribal, State or Federal safety, health and child care standards. If a conflict exists in these standards, the Federal standard shall be followed; in the absence of a Federal standard, the Tribal standard shall be followed. In case of conflict, any such Tribal health or safety standards shall be no greater than any otherwise applicable State standard.

(t) *Alternative, innovative and exemplary programs.* Vigorously encourage and support alternative, innovative and exemplary programs reflecting Tribal or Alaska Native village specific learning styles, including but not limited to, parent-based early childhood education programs, adult and vocational technical education, library and media services, special education including programs for handicapped, gifted and talented students, summer programs, and career development.

(u) *Training.* Provide support and technical assistance at all levels for the training of duly sanctioned Tribal and Alaska Native education representatives involved in educational decision-making, including pre-service and in-service training for educators.

(v) *Tribally controlled community colleges.* Assist Tribes and Alaska Natives in their planning, designing, construction, operation and maintenance of Tribally controlled community colleges, consistent with all appropriate legislation. (See part 41 of this subchapter.)

(w) *Equal opportunity.* Establish and enforce policies and practices to guarantee equal opportunity and open access to all Indian and Alaska Native students in all matters relating to their education programs consistent with the provisions of the Privacy and Freedom of Information Acts.

(x) *Accountability, evaluation of MIS.* (1) Enforce a strict standard of fiscal, programmatic and contract accountability to the Tribes and Alaska Native entities and assist them in the development of their own standards of accountability and carry out annual evaluations of all Bureau-operated or funded education programs.

(2) Provide and make available a computerized management information system which will provide statistical information such as, but not limited to, student enrollment, curriculum, staff, facilities, student assessments and related educational information.

(y) *Accreditation.* (1) Encourage and assist all Bureau and contract schools to attain appropriate State, regional, Tribal or national accreditation.

(2) Assist and promote the establishment of Indian regional and/or national accrediting associations for all levels of Indian Education.

(z) *Eligibility for services.* Serve Indian and Alaska Native students who are recognized by the Secretary of the Interior as eligible for Federal services, because of their status as Indians or Alaska Natives, whose Indian blood quantum is ¼ degree or more. In the absence of other available facilities, children of non-Indian Bureau personnel or other non-eligibles may be served subject to the provisions of 25 U.S.C. 288 and 289.

(aa) *Appropriations.* Aggressively seek sufficient appropriations to carry out

all policies herein established subject to the president's budget and the Department's budgetary process.

§ 32.5 Evaluation of implementation of Pub. L. 95–561.

The Director, Office Indian Education Programs will develop guidelines for evaluating all functional and programmatic responsibilities associated with Title XI of the Education Amendments of 1978 (Pub. L. 95–561), and in the January 1, 1981 annual report, as provided in section 1136, of Pub. L. 95–561 include a statement of the specific program toward implementing these policies.

PART 33—TRANSFER OF INDIAN EDUCATION FUNCTIONS

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33.1 Definitions.
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33.5 Area education functions.
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33.7 Implementing procedures.
33.8 Realignment of area and agency offices.
33.9 Development of procedures.
33.10 Issuance of procedures.

AUTHORITY: Sec. 1126, Pub. L. 95–561, Education Amendments of 1978 (92 Stat. 2143, 2391; 25 U.S.C. 2006).

SOURCE: 44 FR 58103, Oct. 9, 1979, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 33.1 Definitions.

(a) *Agency* means that organizational unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes.

(b) *Early childhood* means education activities serving the 0 to 8 year old child, including pre-natal, child care, kindergarten, homebase, homebound, and special education programs.

(c) *Elementary and secondary education* means those programs serving the child from grade one through grade twelve.

(d) *Operating level* means the organizational level at which direct educational services are performed.

(e) *Personnel directly and substantially involved* means those persons who provide services which affect the operation of Indian education programs, including (but not limited to) school or institution custodial or maintenance personnel, and whose services for Indian education programs require the expenditure of at least 51 percent of the employee's working time.

(f) *Post-secondary* means education programs that are provided for persons past the age for compulsory education to include continuing education, higher education, undergraduate and graduate, career and adult education. As used in this Act, the term Post-Secondary shall include those Bureau of Indian Affairs programs operated at Southwestern Indian Polytechnic Institute, the Institute of American Indian Arts, and Haskell Indian Junior College, and those operated at Tribally controlled community colleges under Pub. L. 95–471.

§ 33.2 Policy.

It is the policy of the Department of the Interior that:

(a) Indian control of Indian affairs in all matters relating to education shall be facilitated.

(b) Authority to perform education functions shall be delegated directly from the Assistant Secretary-Indian Affairs to the Director, Office of Indian Education Programs.

(c) Administrative authority shall be compatible with program authorities; and, both shall be delegated to the operating level to assure efficient and effective delivery of education services to Indian children, youth, and adults.

(d) The Director, Office of Indian Education Programs shall supervise the operation of Indian education program personnel at the Arena, Agency, and the three Bureau of Indian Affairs post-secondary institutions.

(e) Indian Education program functions to be performed at the Area office level shall include those dealing with higher education, Johnson-O'Malley aid to non-Bureau schools, off-reservation boarding schools, those education program operations serving tribes from more than one Agency except those at the three post-secondary institutions,

on-reservation education functions located at an Agency where no educational personnel are assigned, education contract operations, and adult education.

§ 33.3 Delegation of authority.

The administrative and programmatic authorities of the Assistant Secretary—Indian Affairs pertaining to Indian education functions shall not be delegated to other than the Director, Office of Indian Education Programs. The Assistant Secretary shall publish delegations of authorites to the Director in the Bureau of Indian Affairs Manual after the effective date of these regulations.

§ 33.4 Redelegation of authority.

The authorities of the Assistant Secretary—Indian Affairs as delegated to the Director, Office of Indian Education Programs may be redelegated by the Director to a Bureau of Indian Affairs Agency Superintendent for Education, to a Bureau Area Education Programs Director, or to a President of a Bureau of Indian Affairs post-secondary education institution.

§ 33.5 Area education functions.

A Bureau Area Education Programs Director shall perform those Bureau of Indian Affairs education functions related to Johnson-O'Malley aid to non-Bureau schools, higher education, Bureau peripheral dormitories, adult education, off-reservation residential schools, on-reservation functions located at an Agency where no education personnel are assigned, education contract operations, and those education program operations serving Tribes from more than one Agency, except those of the Bureau's post-secondary institutions.

§ 33.6 Agency education functions.

A Bureau Agency Superintendent for Education shall perform those education functions related to elementary and secondary education, early childhood education, peripheral dormitories which have been supervised prior to Pub. L. 95–561, and exceptional education programs as defined in 25 CFR part 32. This section shall not be construed to remove higher education, adult education and/or Johnson-O'Malley programs currently administered at the Agency level. Further, the Director under the authority of § 33.4 will periodically review Area programs such as higher education, adult education, and Johnson-O'Malley for consideration to assign to Agency level administration.

§ 33.7 Implementing procedures.

(a) The Assistant Secretary—Indian Affairs shall:

(1) Implement the transfer for Indian education functions from the jurisdiction of Agency Superintendents and Area Office Directors to the Director, Office of Indian Education Programs.

(2) Modify existing descriptions of positions for Area Office Directors, Agency Superintendents, and all other personnel directly and substantially involved with the provisions of education services by the Bureau of Indian Affairs.

(b) The Director, Office of Indian Education Programs shall:

(1) For Area, Agency, and Bureau of Indian Affairs postsecondary institutional personnel:

(i) Properly list the duties of each employee required to perform functions redelegated by the Director;

(ii) Define the responsibilities for monitoring and evaluating education programs; and

(iii) Exercise supervision of these employees.

(2) Define responsibilities for employees providing technical and coordinating assistance for support services to the Director, Office of Indian Education Programs and his/her subordinates, including procurement, contracting, personnel, and other administrative support areas.

[44 FR 58103, Oct. 9, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 49 FR 12702, Mar. 30, 1984]

§ 33.8 Realignment of area and agency offices.

The Assistant Secretary—Indian Affairs shall implement Bureau of Indian Affairs Area Office and Agency Office reorganizations required to structure these offices consistent with education program activities to be undertaken at those levels.

§ 33.9 Development of procedures.

The Director, Office of Indian Education Programs shall prepare and promulgate procedures to govern the provision of support services by the Bureau of Indian Affairs for the education function. These procedures shall be consistent with existing laws, regulations, Executive Orders, and Departmental policies governing administrative support services. These provisions shall be prepared in consultation with those personnel within the Bureau of Indian Affairs who are responsible to the Commissioner of Indian Affairs for providing support services.

§ 33.10 Issuance of procedures.

The Assistant Secretary—Indian Affairs, directly or through the Commissioner of Indian Affairs, shall issue procedures in the Bureau of Indian Affairs Manual governing the provision of support services to the Bureau's Education Office function.

PART 36—MINIMUM ACADEMIC STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN AND NATIONAL CRITERIA FOR DORMITORY SITUATIONS

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36.77 Waivers and revisions.

AUTHORITY: Section 502, 25 U.S.C. 2001; section 5101, 25 U.S.C. 2001; Section 1101, 25 U.S.C. 2002; 5 U.S.C. 301; 25 U.S.C. 2 and 9; 25 U.S.C. 2901, Title I of P.L. 101–477.

SOURCE: 50 FR 36816, Sept. 9, 1985, unless otherwise noted.

Subpart A—General Provisions

§ 36.1 Purpose, scope, and information collection requirements.

(a) The purpose of this rule is to establish minimum academic standards for the basic education of Indian children for Bureau-operated schools and for those Indian-controlled contract schools which adopt these standards and to establish national criteria for dormitory situations for schools operated by the Bureau of Indian Affairs

and for Indian-controlled contract schools operating dormitories.

(b) These academic standards and dormitory criteria will take effect thirty (30) days after the date of their publication in the FEDERAL REGISTER. The Bureau of Indian Affairs intends to review and evaluate the applicability of the academic standards and dormitory criteria under this part after two years and make appropriate revisions.

(c) The information collection requirement contained in § 36.61(a) has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1076–0092. The information is being collected to evaluate waiver request(s) from tribal government(s) and school board(s). The information will be used to ascertain the approval of academic waiver request. The obligation to respond is mandatory under 25 U.S.C. 2001. The information collection requirements contained in §§ 36.71(g), 36.74(f), and 36.76(b) of this rule are not required to be approved by the Office of Management and Budget since less than ten persons or tribes are affected by the information collection requirement of this rule. However, when ten or more persons or tribes become affected by this requirement, the Bureau will submit an approval request.

§ 36.2 Applicability.

(a) The minimum academic standards for the basic education of Indian children established under this part, subparts B through G, are mandatory for all Bureau of Indian Affairs operated schools unless a tribal governing body or the local school board, if so designated by the tribal governing body, waives, in part or in whole, the standards established under this part. When a tribe(s) formally takes action to waive, in total or in part, standards contained in this part, proof of such action shall be forwarded to the Agency Superintendent for Education (ASE) or area Education Programs Administrator (EPA). Within 15 days of receipt of such documentation the ASE or EPA shall notify, in writing, the parents or legal guardians whose children are attending the school(s) affected.

(b) The minimum academic standards for the education of Indian children established under subparts B through G are not applicable to Indian-controlled contract schools unless the Indian-controlled contract school board formally adopts them in whole or in part. The Bureau will not refuse to enter into a contract on the basis of failure to meet these standards but will, through contracting procedures, assist the school in reaching compliance, if so requested by the Indian-controlled contract school board.

(c) The national criteria for dormitory situations established under subpart H will serve as a minimum requirement and shall be mandatory for all Bureau-operated and Indian-controlled contract schools.

(d) Standards and criteria contained under this part will serve as minimum requirements for the regular school educational program.

(e) In states where additional minimum academic standards exist or are established, those state standards shall also apply.

§ 36.3 Definitions.

For purposes of this part, the following definitions apply:

Accreditation means a school has received an official decision by the State(s) department(s) of education, or another recognized agency having official authority, that, in its judgment, the school has met the established standards of quality.

Agency means the current organizational unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian tribes.

Agency school board as defined in sec. 1139(1), Pub. L. 95–561, means a body, the members of which are appointed by the school boards of the schools located within such Agency. The number of such members shall be determined by the Director in consultation with the affected tribes. In Agencies serving a single school, the school board of that school shall function as the Agency school board.

Agency Superintendent for Education means the Bureau official in charge of education functions at an Agency and to whom the school supervisor(s) and other educators under the Agency's jurisdiction report.

Area Education Programs Administrator means the Bureau official in charge of Bureau education programs and functions in a Bureau Area Office and is responsible for off-reservation residential schools, and, in some cases, peripheral dormitories and on-reservation day schools not receiving services from the Agency Superintendent for Education.

Assistant Secretary means the Assistant Secretary for Indian Affairs of the Department of the Interior.

Authentic assessment means the testing of higher order thinking skills by monitoring performance of tasks requiring analysis, creativity, and application skills in real life situations.

Average daily membership (ADM) means the aggregate days membership of a given school during a given reporting period divided by the number of days school is in session during this period. Only days on which the students are under the guidance and direction of teachers shall be considered as days in session. The reporting period is generally a given regular school term.

Basic academic skills means the abilities acquired by observation, study, or experience in mental and/or physical performance (e.g., proficiency in planning and investigating, operational techniques, comprehension, organization, execution, remembrance and application of knowledge to acquire a desired result) basic to the mastery of school work or other activity.

Basic education means those components of education emphasizing literacy in language arts, mathematics, natural and physical sciences, history, and related social sciences.

Bureau means the Bureau of Indian Affairs of the Department of the Interior.

Certification means the general process by which the State or Agency authorized by the State adjudges and stipulates that an individual meets the established standards which are prerequisite to employment for a teacher or administrator in education.

Competency means having the requisite abilities, skills, or a specified level of mastery.

Computer literacy used here means the general range of skills and understanding needed to function effectively in a society increasingly dependent on computer and information technology.

Content area means the usual school subjects of instruction, such as: Language arts, mathematics, science, social studies, fine arts, practical arts, health, and physical education.

Counselor means a staff member, including those in both academic and dormitory situations, who helps the students to understand educational, personal, and occupational strengths and limitations; to relate abilities, emotions, and aptitudes to educational and career opportunities; to utilize abilities in formulating realistic plans; and to achieve satisfying personal and social development.

Course of study means a written guide prepared by administrators, supervisors, consultants, and teachers of a school system or school, as an aid to teaching a given course or an aspect of subject-matter content to a given category of pupil.

Criterion-referenced test means an achievement test designed to measure specific skills within a subject area. Test results indicate which skills a student has or has not learned.

Days means calendar days.

Director means the Director of the Office of Indian Education Programs in the Bureau.

Dormitory means a facility which provides students boarding and lodging on a temporary residential basis for the purpose of attending a Bureau-operated or Indian-controlled contract or public school.

Dormitory manager means a staff member who manages the day-to-day, 24-hour operation of one or more dormitories.

Elementary school is defined as any combination of grades K–8 except when any of these grades are included in the junior high or middle school level.

Exceptional child program means a program for students who are eligible to receive education and related services as defined by 25 CFR 39.11(i).

Feeder school means a school whose exiting students are absorbed by a school offering instruction on the next higher grade level.

Formative evaluation is an evaluation of progress during the implementation of a program. Its purpose is to provide

immediate feedback on results to enable modifying the processes used in order to enhance success and prevent failure.

Goals means a statement of what the school system is attempting to do to meet the comprehensive educational needs and interests of its pupils, in accordance with its statement of philosophy.

Grade means the portion of a school program which represents the work of one regular school year; identified by a designation such as kindergarten, grade 1 or grade 10.

Grade level is a designation applied to that portion of the curriculum which represents the work of one regular school year.

High school is defined as grades nine through twelve, except when grade nine is included in the junior high or middle school organizational unit.

Higher order thinking skills (or advanced skills) means skills such as reading comprehension, written composition, and mathematical reasoning. They differ from basic or discrete skills such as phonetic decoding and arithmetic operations.

Indian-controlled contract school means a school that is operated by a tribal organization and funded under a contract with the Bureau.

Indian student means a student who is a member of an Indian tribe and is one-quarter (¼) or more degree of Indian blood quantum.

Indian tribe or *tribe* means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Intense residential guidance means the program for residential students who need special residential services due to one or more of the problems as stated in 25 CFR 39.11(h).

Junior high or *middle school* is defined as grades seven and eight, but may include grade six when it is not included in the elementary school level and/or grade nine when it is not included in the high school level.

Kindergarten means a group of students or a class that is organized to provide educational experiences for children for the year immediately preceding the first grade.

Librarian means a certificated school employee whose principal responsibilities include selection, acquisition, preparation, cataloging, and circulation of books and other printed materials; planning the use of the library by teachers and students; and instructing students in the use of library books and materials, whether the library is maintained separately or as a part of an instructional materials center.

Local school board when used with respect to a Bureau-operated school means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, the body elected by the parents of the Indian children attending a Bureau-operated school. In schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected and the number of such members shall be determined by the Director in consultation with the affected tribes.

Objectives means a statement of the general, long-range aims and the specific, short-range aims which indicate what the school is attempting to do to meet the needs of the students in accordance with the philosophy, goals, and policies of the school system.

Paraprofessional means a staff member who works with and is under the supervision of a professional staff member but who does not have full professional status, e.g., teacher aide. The term denotes a level of knowledge and skills possessed by an individual or required of an individual to perform an assignment. The level of skills is usually at a predetermined minimum level.

Parent means a natural parent or guardian or a person legally acting as parent.

Peripheral dormitory is a facility which provides students boarding and lodging during the school year for the purpose of attending a public school.

Regular program student means all students including those determined to be eligible for services as defined under the Exceptional Child Program, 25 CFR 39.11(i).

Residential school means an educational institution in which students are boarded and lodged as well as taught.

Residential Services under Exceptional Child Program means a program providing specialized residential care as determined by 25 CFR 39.11(i).

School means an educational institution, including elementary, junior high or middle, high school, peripheral, cooperative, and contract schools serving students in grades Kindergarten through 12 and as further defined under 25 CFR 39.2(q).

School board means an Agency or local school board.

School day, *instructional day*, or *teaching day* is a day on which the school is open and students are under the guidance and direction of teachers in instructional activities where the minimum number of instructional hours are met.

School Supervisor means the official in charge of a school and/or peripheral dormitory who reports to an Agency School Superintendent or an Area Education Programs Administrator, as appropriate.

Secretary means the Secretary of the Interior.

Self-contained class means a class having the same teacher or team of teachers for all or most of the daily session.

Standard means the established criterion and/or specified requirement which must be met and maintained.

Summative evaluation means a systematic analysis of the results or products of a program after it is completed. Its purpose is to determine the extent to which the objectives of the program have or have not been achieved. One form of summative evaluation compares results with those of another ''control'' program using different procedures. Other forms compare results with past results or predetermined target outcomes.

Teacher means a certified staff member performing assigned professional activities in guiding and directing the learning experiences of pupils in an instructional situation.

Unit/Unit of instruction means a major subdivision of instruction generally composed of several topics including content and learning experiences developed around a central focus such as a limited scope of subject matter, a central program, one or more related concepts, one or more related skills, or a combination of these. One unit equals one full year of instruction in a subdividion thereof. *Unit* and *credit* shall be used interchangeably.

[50 FR 36816, Sept. 9, 1985, as amended at 59 FR 61765, Dec. 1, 1994]

Subpart B—Educational Management

§ 36.10 Standard I—Philosophy and goals.

(a) Each school shall develop a written mission statement and philosophy of education that addresses the accumulation of knowledge and development of skills, interests, appreciations, ideals, and attitudes within the school's total educational program. A statement of expected outcomes shall outline what the school is attempting to do to meet the needs and interests of its students and community in accordance with the school's mission statement and philosophy.

(b) The statement of philosophy and goals shall be developed with the involvement of students, parents, lay citizens, school staff, and tribe(s) and shall be formally adopted by the local school board.

(c) The philosophy and goals shall be reviewed annually and revised as necessary by each school.

(d) A copy of the philosophy and goals shall be submitted to the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

(e) Informational provisions shall be developed in the form of a manual, handbook, brochure, or other written document(s) of the minimum academic standards of the school's programs and the basic rules and procedures of the school. The staff, students, and parents shall receive the written document or documents and have same explained to all who request explanation. The topics

covered in the document(s) shall include but not be limited to the following:

(1) Statement of philosophy and goals;

(2) Description of how policies are developed and administered;

(3) A brief explanation of curricular offerings;

(4) A copy of student rights handbook;

(5) Basic practices related to:

(i) Grading system;

(ii) Graduation requirements, if applicable;

(iii) Attendance policies;

(iv) Special programs at the school; and

(v) Student activities available for students.

[50 FR 36816, Sept. 9, 1985, as amended at 59 FR 61765, Dec. 1, 1994]

§ 36.11 Standard II—Administrative requirements.

(a) *Staffing.* Each school shall, at a minimum, meet the following requirements:

(1) The overall school ratio of regular program students to regular program teachers in self-contained classrooms shall not exceed the following except under the conditions set forth in paragraphs (a)(4) (i) and (ii) of this section. Average daily membership (ADM) shall be used in meeting the following ratios.

Level	Ratio
Kindergarten	20:1
1st grade—3rd grade	22:1
4th grade—high school	25:1

(2) Multi-grade classrooms that cross grade-level boundaries (e.g., K–1, 3–4, etc.) shall use the maximum of the lower grade. In grades K–8, grades shall be consolidated to meet the teacher ratios listed above.

(3) The daily teaching load per teacher in departmentalized classes shall not exceed 150 students (ADM) except in activity type classes such as music and physical education.

(4) Schools exceeding these specific staffing ratios for over 30 consecutive days during one school year shall submit a justification for a request for a waiver to the Director, through the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, which may be approved for a period not to exceed one school year and for the following reasons:

(i) Additional classroom space is not available for establishing another class; or

(ii) The school, Agency, Area and Office of Indian Education Programs Applicant Supply File has been exhausted and the required teacher position cannot be filled. However, efforts to fill the vacancy shall be continued.

(5) Each school shall provide, in the absence of a regular teacher, a certified substitute teacher who meets the State substitute teacher qualifications. In the event that such a substitute is not available, coverage will be provided by a school employee designated by the school supervisor. A class cannot have as a teacher an employee without teaching credentials for more than 20 school days during any one school year.

(b) *Written school enrollment and attendance policies.* Each school shall have written school enrollment and attendance policies in compliance with and/or consistent with 25 CFR 31, Federal Schools for Indians, the statutes of the State, and tribal education ordinances.

(c) *Geographic attendance boundaries.* Each Agency Superintendent for Education shall establish and implement non-overlapping geographic attendance boundaries within that Agency for each school within the administrative jurisdiction of that Agency. The establishment of such geographic boundaries shall require coordination with contiguous Agencies within the Area and consultation with the Agency or other relevant school boards and/or tribes and shall be reviewed each year to appropriately adjust for geographic changes in enrollment, changes in school capacities, and improvement of day school opportunities for students. The Director shall establish and implement geographic attendance boundaries for each off-reservation boarding school under his/her administrative jurisdiction. The establishment of geographics boundaries shall require coordination with other Area Education Programs Administrators similarly affected by the

requirement of this part, the affected tribes, and the Director.

(d) *Immunization.* School children shall be immunized in accordance with the regulations and requirements of the state in which they attend school or standards of the Indian Health Service.

[50 FR 36816, Sept. 9, 1985, as amended at 59 FR 61765, Dec. 1, 1994]

§ 36.12 Standard III—Program needs assessment.

The policy and procedures of each school and its curricula shall be developed and revised based on an assessment of educational needs. This needs assessment shall be conducted at least every seven (7) years at the same frequency as required in § 36.50, School Program Evaluation. This assessment shall include at least the following:

(a) A clear statement of student educational goals and objectives. A student educational goal is defined as a statement of the knowledge, skills, attitudes, or concepts students are expected to exhibit upon completion of a grade level. Student educational objectives are defined as statements of more specific knowledge, skills, attitudes, or concepts students must exhibit in order to achieve the goal.

(b) The collection of appropriate data from which valid determinations, judgments, and decisions can be made with respect to the status of the educational program, e.g.,

(1) Perceptions of the parents, tribes, educators, and the students with regard to the relevance and importance of the goals.

(2) The extent to which educational goals and objectives have been achieved.

(3) The data developed as a result of the evaluation outlined in § 36.50 School Program Evaluation.

(c) A statement of educational needs which identifies the difference between the current status of students and the desired goals for the students.

(d) A plan of action to remediate assessed needs.

§ 36.13 Standard IV—Curriculum development.

(a) Each school shall implement an organized program of curriculum development involving certified and noncertified staff and shall provide the opportunity for involvement by members of the local community.

(b) Curriculum development program activities shall be based on an analysis of school programs and shall be related to needs assessment and evaluation.

(c) Each school shall involve staff and provide the opportunity for involvement by the tribal community in planning programs, objectives, and activities which meet student/teacher needs.

Subpart C—Minimum Program of Instruction

§ 36.20 Standard V—Minimum academic programs/school calendar.

(a) Each school shall meet the applicable minimum program of instruction provided in this subpart and, where applicable, the graduation requirements under § 36.32. A school that has difficulty in meeting these minimum academic program requirements may seek alternative ways of meeting some portions of the minimum program. For example, courses may be taught in alternate years. Should a school wish to adopt alternative measures, the school shall submit a request for approval to the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, for the adoption of alternative measures with a written justification as to how this action will meet the applicable minimum program of instruction.

(b) *Length of school term and day.* All schools shall provide an educational program of studies which is conducted for not less that 180 instructional days per school term. Regular program students shall be in instructional activities, exclusive of lunch (which must be at least 30 minutes a day), in accordance with the following minimums: Kindergarten—2.5 instructional hours/day; grades 1–3—4.5 instructional hours/day; grades 4–6—5.0 instructional hours/day; grades 7–12—5.5 instructional hours/day.

(c) If an emergency arises from an uncontrollable circumstance during the school day which results in the dismissal of students by the school administration, the day may be counted as a

school day provided that three-fourths of the instructional hours are met.

(d) The educational program shall include multi-culture and multi-ethnic dimensions designed to enable students to function effectively in a pluralistic society.

(1) The school's language arts program shall assess the English and native language abilities of its students and provide instruction that teaches and/or maintains both the English and the primary native language of the school population. Programs shall meet local tribal approval.

(2) The school program shall include aspects of the native culture in all curriculum areas. Content shall meet local tribal approval.

(3) The school program shall assess the learning styles of its students and provide instruction based upon that assessment. The method for assessing learning styles shall be determined at the local level.

(4) The school program shall provide for at least one field trip per child per year to broaden social and academic experiences.

(e) All intraschool programs (e.g., library, instructional labs, physical education, music, etc.) which are directly related to or affect student instruction shall provide services from the beginning of the school term through the final class period at the close of the school term.

[50 FR 36816, Sept. 9, 1985, as amended at 59 FR 61765, Dec. 1, 1994]

§36.21 Standard VI—Kindergarten instructional program.

(a) The curriculum for kindergarten shall provide children with experiences which emphasize language development, native language where necessary as determined by 25 CFR 39.11(g), and performance of the requirements in paragraph (b) of this section. Such programs shall assist children in developing positive feelings toward themselves and others.

(b) A kindergarten instructional program shall include but not be limited to:

(1) Language (observing, listening, speaking).

(2) Exploration of the environment (number, space and time relationships, natural science).

(3) Psychomotor and socialization development.

(4) Development of imaginative and creative tendencies.

(5) Health education inclusive of the requirements contained in the Act of May 20, 1886, 24 Stat. 69.

§36.22 Standard VII—Elementary instructional program.

(a) The elementary instruction programs, grades one through six, shall include but need not be limited to:

(1) Language arts.

(2) Mathematics.

(3) Social studies.

(4) Sciences.

(5) Fine arts.

(6) Physical education.

(b) Each school shall integrate the following content areas into its curriculum:

(1) Career awareness,

(2) Environmental and safety education,

(3) Health education (includes requirements contained in 24 Stat. 69),

(4) Metric education, and

(5) Computer literacy.

§36.23 Standard VIII—Junior high/middle school instructional program.

(a) The instructional program shall reflect the school's philosophy and the needs of the students and the community. It shall be part of a progressive development that begins in the elementary program which precedes it and continues to the secondary program which follows.

(b) The curriculum shall include the following required instructional content areas at each grade level but need not be limited to:

(1) *Language arts.* One unit shall be required of each student every year.

(2) *Social studies.* One unit shall be required of each student every year.

(3) *Mathematics.* One unit shall be required of each student every year.

(4) *Science.* One unit shall be required of each student every year.

(5) *Fine arts and practical arts.* One unit each shall be required of each student in the junior high/middle school instructional program.

(6) *Computer literacy*. One unit shall be required of each student in the junior high/middle school instructional program.

(7) *Physical education*. One unit shall be required of each student in the junior high/middle school instructional program.

(c) The following content areas shall be integrated into the curriculum.

(1) Career exploration and orientation.

(2) Environmental and safety education.

(3) Metric education.

(4) Consumer economics (including personal finances).

(5) Health education (includes meeting the requirements contained in 24 Stat. 69).

(d) Languages other than English are encouraged to be offered as a content area beginning at junior high/middle school level.

(e) Student enrollment in any laboratory or vocational exploration class shall be consistent with applicable health and safety standards.

§ 36.24 Standard IX—Secondary instructional program.

(a) The secondary instructional program shall reflect the philosophy of the student, tribe, community, and school, and an awareness of the changing world.

(b) The secondary instructional curriculum shall include the following content areas:

(1) Language arts (communication skills).

(2) Sciences.

(3) Mathematics.

(4) Social studies.

(5) Fine arts and practical arts.

(6) Physical education.

(7) Languages other than English.

(8) Driver education. (See guidelines available from the applicable State Department of Education.)

(9) *Vocational education*. Curriculum shall be designed and directly related to actual occupational trends (national, regional, and local) and to introduce and familiarize students with various occupations in technology, industry and business, as well as required special skills and the training requisites. Programs shall be directed toward assisting students in making career choices and developing consumer skills and may include the following:

(i) Vocational exploration,

(ii) Vocational skill development, and

(iii) School/on-the-job cooperative education programs.

(c) The following shall be integrated into the curriculum:

(1) Consumer economics (including personal finances),

(2) Metric education,

(3) Safety education, and

(4) Health education. (In addition, the program shall meet the requirements contained in 24 Stat. 69.)

(d) The high school program shall provide program coordination with feeder schools, career direction, and preparation for the student entering independent living through employment, post-secondary education, and/or marriage.

(e) Yearly class schedules shall take into account the graduation requirements of each student.

(f) Student enrollment in any laboratory or vocational class shall be consistent with applicable health and safety standards.

(g) Schools are encouraged to provide alternative programs that lead to high school completion for secondary students who do not function successfully in the regular academic setting.

[50 FR 36816, Sept. 9, 1985, as amended at 59 FR 61765, Dec. 1, 1994]

Subpart D—Student Instructional Evaluation

§ 36.30 Standard X—Grading requirements.

(a) Each school shall implement a uniform grading system which assesses a student's mastery of the prescribed objectives of the courses of study undertaken. The mastery of prescribed course objectives shall be the primary measure of academic attainment for reporting student grades on report cards.

(b) The information derived from student instructional evaluations shall be shared with the student and with the parents and shall be used to give teachers and students direction for subsequent learning activities.

(c) Parent/teacher and parent/teacher/student conferences focused on the student's instructional progress and development shall be held, where feasible and practical, to provide an additional means of communication between home and school. Residential schools may meet this standard by documenting the communication of student grades on report cards to parents.

(d) Each school shall issue a report card to parents of students who are under the age of eighteen (18) and to students eighteen (18) years of age and older on a regular basis, but not less than four (4) times yearly. The report card shall include, but not be limited to, the following sections:

(1) Recommendations and probable promotion status;

(2) Appropriate signatures and request for return of report cards; and

(3) Student attendance record.

(e) A summary of each year's final card shall become part of the student's permanent school record.

§36.31 Standard XI—Student promotion requirements.

Each school shall establish and implement a promotion policy which shall be submitted to and approved by the local school board and Agency Superintendent for Education or Area Education Programs Administrator, as appropriate. The requirements shall include, but not be limited to, the following:

(a) Each grade level or equivalent shall have a minimum criteria for student promotion based primarily on measurable mastery of the instructional objectives.

(b) Criterion-referenced tests that evaluate student skills shall be utilized for measuring the mastery of instructional objectives. The evaluation results shall form the basis for the promotion of each student.

(c) A student who has not participated, either directly or through approved alternative instructional methods or programs, in a minimum of 160 instructional days per academic term or 80 instructional days per semester without a written excused absence shall not be promoted. A school board or a school committee may review a promotion decision and, if warranted due to compelling and/or extenuating circumstances, rescind in writing such action on a case-by-case basis. Alternative instructional methods shall be submitted in writing for approval by the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

§36.32 Standard XII—Graduation requirements for a high school diploma.

Graduation requirements contained under this section shall be applied beginning with the graduating class of the 1987–88 school year.

(a) Satisfactory completion of a minimum number of units shall be the measure for the issuance of a high school diploma.

(b) To graduate, a student shall earn 20 units in a four year high school program unless the state in which the school is located exceeds these requirements, in which case the state's requirements shall apply; fifteen (15) units shall be required as follows:

(1) Language arts—four (4) units.

(2) Mathematics—three (3) units.

(3) Social studies—three (3) units.

(i) One (1) unit in United States history;

(ii) One-half (½) unit in civics/government;

(iii) One-half (½) unit in tribal history/government;

(iv) One-half (½) unit in Indian studies; and

(v) One-half (½) unit in any other social studies;

(4) Science—two (2) units.

(i) One (1) unit in the general science area.

(ii) One (1) unit in laboratory science areas, i.e., chemistry, physics, biology, zoology, laboratory anatomy.

(5) Physical education—one (1) unit.

(6) Practical arts—one (1) unit. Credit in any vocational course may also be used to satisfy this required unit.

(7) Fine arts—one (1) unit. Music, art, dance, drama, theatre, and other fine arts courses may be used to satisfy this required unit. These are minimum requirements; local schools may establish academic or vocational requirements beyond those prescribed by these standards.

(c) A school with an average enrollment of fewer than 75 students may offer subjects in alternate years. If schools use this pattern, alternating pairs of subjects shall be listed and approved by the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

(d) Credits earned through approved correspondence or extension study may be accepted if such credits are from schools approved or accredited by the state in which they are located or by a college or university which is regionally accredited for such purposes.

(e) Students who successfully complete the requirements of the High School Proficiency Examination in the State in which the school is located shall receive an endorsement so stating on their diplomas.

Subpart E—Instructional Support

§ 36.40 Standard XIII—Library/media program.

(a) Each school shall provide a library/media program which shall, as a minimum, meet the applicable state and/or regional standards, but shall not be limited to these, and shall include the following:

(1) A written set of instructional and service objectives shall be established that is intergrated and consistent with the school's educational goals and philosophy. The librarian or educational media specialist, with students and staff, shall set objectives based on assessed academic and residential needs. The program and services will be evaluated yearly by the principal and the librarian or educational media specialist to determine the degree to which all objectives have been met.

(2) A written policy for the selection of materials and equipment shall be developed by a library committee in collaboration with the librarian and be approved by the school board. The colleciton of materials shall include as a minimum the following:

(i) A collection of books suitable for the range of student abilities and interests being served in the following ADM ratios.

(A) Elementary K–6, 15 books per student

(B) Middle 7–8, 12 books per student

(C) Secondary 9–12, 10 books per student

It is required that materials pertaining to Indian Tribes and/or Alaskan Natives be integrated within this basic collection.

(ii) Eight (8) to 12 percent of the basic collection must be composed of reference books, currently relevant and in a state of good physical condition, for practical use. Single copies of the principal textbooks used to complement instruction shall be in the collection, but textbooks cannot be counted toward this standard.

(iii) A periodical collection, suitable for the range of student abilities and interests being served, consisting of one (1) periodical for every ten (10) students, shall be maintained. Schools of over 200 will have a base collection of 20 periodicals.

(iv) A professional collection for the school staff shall be developed and maintained by the librarian in cooperation with a faculty committee.

(v) A variety of audio-visual materials, suitable for the range of instruction being provided, of at least 750 items or five (5) items for each student, whichever is larger, and inclusive of materials located in the classrooms shall be maintained. This category includes some of each of the following: Tactile objects, globes, models, maps, films, film-strips, microforms, slides, audio and video tapes, recordings, transparencies and graphics, and the equipment to use all of these. Multiple items within a specific set of materials will be counted as separate items.

(3) There shall be a library media center serviced by a librarian. Schools with fewer than 200 students are encouraged, wherever feasible, to cooperate in sharing librarian resources. Schools within an Agency and/or Area may cooperatively share the costs and services of a librarian who shall facilitate sharing of the combined available resources among the cooperating schools in accordance with the following ratios:

School Enrollment (ADM)

Up to 100—⅕ time librarian

101–200—⅕ time librarian and ½ time library aide or 20 hours of library activity

201–400—1 full-time librarian or ⅖ time librarian provided the school has a full-time library aide
401+—1 full-time librarian and a full-time library aide

(4) All libraries must conduct an annual inventory of available books, materials, and equipment in accordance with the acquisitions and selection policies.

§36.41 Standard XIV—Textbooks.

(a) Each school shall establish a textbook review committee composed of teachers, parents, and students, and school board members. Appointment to the textbook review committee shall be subject to school board approval.

(b) The textbook review committee shall establish a procedure and criteria for the annual review of textbooks and other materials used to complement instruction. The criteria shall include, but not be limited to, the following:

(1) The textbook content shall meet the course objectives which are within the adopted school curriculum.

(2) The textbooks shall, as much as possible, reflect cultures accurately.

(3) The textbooks shall be current, in good physical condition, and varied in reading levels.

(c) Each school shall equitably distribute instructional materials to all classrooms. Each school shall inventory all property and equipment annually prior to requisitioning additional materials. Copies of the inventory shall be kept on file by the school staff.

§36.42 Standard XV—Counseling services.

Each school shall offer student counseling services concerned with physical, social, emotional, intellectual, and vocational growth for each individual. Counseling services shall be included in a school-wide assessment program.

(a) Each Agency and Area, as appropriate, shall institute and supervise an assessment program for its schools in order to provide for the objective assessment of student academic performance. Required formal tests shall be administered annually to all regular program students in grades 4, 8, and 12. (The testing of special education and gifted/talented students shall be in accordance with respective regulations.) If required by state certification standards, schools may use the state mandated academic achievement tests and accompanying requirements. These formal tests and their subtest contents, as well as the test-related procedures, shall include, but not be limited to, the following:

(1) Each Spring, schools shall conduct testing for grades 4, 8, and 12 using a current version of a standardized academic achievement test based upon the national assessment standards designed to assess higher order thinking skills. All schools shall keep a current record, with the Office of Indian Education Programs, of the test the school administers each Spring and the testing dates.

(2) Schools shall use some form of performance-based or authentic assessment in addition to standardized achievement testing.

(3) Each school shall report the summative results of its assessment program to its respective Agency or Area, as appropriate, and its school board.

(4) Parents/guardians shall be informed of their children's assessment results and provided with an explanation and interpretation to ensure adequate understanding of the results.

(5) Each school's instructional program shall establish an ongoing student academic assessment program to ensure that defined assessment procedures are in place. The program shall include regular training in basic assessment procedures and routines for all teachers and other staff involved in student assessment.

(6) Each Agency and Area, as appropriate, shall report the results of each school's formal Spring tests to the Office of Indian Education Programs by August 1 of each year. Summative information from performance-based and authentic assessments shall be reported at the same time.

(b) Each counseling program shall provide the following:

(1) Each school having a minimum school ADM of 200 students shall make provisions for the full-time professional services of a counselor, and each

school enrolling fewer than 200 students shall make provisions for a part-time professional counselor.

(2) The counselors shall be familiar with the unique tribal, social, and economic characteristics of students.

(3) The counseling program shall contain the following:

(i) A written referral procedure;

(ii) Counseling techniques and documentation procedures to provide for the career, academic, social, and personal needs of the students which are based on the cultural beliefs and values of the students being served;

(iii) Preventative and crisis counseling on both individual and group bases;

(iv) Confidentiality and security of counseling records for each student; and

(v) Design and implementation of orientation programs to facilitate the pupil's transition from elementary to junior high/middle school and from junior high/middle school to high school.

(vi) Each junior or middle school and high school student shall receive academic counseling a minimum of twice yearly during which time the counselor shall assist the student in developing a written academic and career plan based on ability, aptitude, and interests. Additionally, counselors will assist high school students in selecting courses which satisfy the school's and the state's graduation requirements and the student's academic and career plan. Further, seniors will be given aid in completing registration and/or financial assistance applications for either vocational or academic post-secondary institutions.

(vii) Each high school counseling program shall be required to have on file for each student a planned academic program of studies which is available from the regular course offerings of the school to meet the student's career objectives and which will show that the student has received counseling.

[50 FR 36816, Sept. 9, 1985, as amended at 59 FR 61766, Dec. 1, 1994]

§ 36.43 Standard XVI—Student activities.

All schools shall provide and maintain a well-balanced student activities program based on assessment of both student and program needs. Each activity program shall help develop leadership abilities and provide opportunities for student participation but not be limited to activities that include special interest clubs, physical activities, student government, and cultural affairs. The activity program shall be an integral part of the overall educational program.

(a) All student activities shall be required to have qualified sponsors and be approved by the school supervisor, and the school board shall approve the overall activity plan. A qualified sponsor is a professional staff member of the school that is given responsibility to provide guidance or supervision for student activities.

(b) A plan of student activity operations shall be submitted, by each activity at the beginning of each school year, to the school supervisor. The plan will include the purpose, structure, coordination, and planned types of fund-raising activities.

(c) School may participate in interscholastic sports and activities on an informal or formal basis. On an informal basis, the Bureau-operated schools will coordinate with other schools in setting up a schedule of sports and games. Schools that participate in state-recognized leagues will abide by those state rules regulating interschool competition.

(d) Until comparable competitive opportunities are provided to all students, regardless of sex, no student shall be barred from participation in interscholastic competition in noncontact sports except on the basis of individual merit.

(e) Residential schools shall plan and provide an intramural program for all students. The program shall include a variety of scholastic and sport activities.

(f) Students shall be involved only in activities which are sanctioned by the school.

(g) All student activities involved only in fund raising are required to establish a school/student activity bank account following school/student banking procedures outlined under 25 CFR 31.7. All student activity accounts shall be audited annually.

(h) The school shall provide for the safety and welfare of students participating in school-sponsored activities.

(i) Each sponsor of a student activity will be given orientation and training covering the responsibilities of a sponsor by the school supervisor.

Subpart F—Evaluation of Educational Standards

§36.50 Standard XVII—School program evaluation and needs assessment.

Each school shall complete a formal, formative evaluation at least once every seven (7) years beginning no later than the second complete school year following the effective date of this part. Schools shall follow state and/or regional accreditation, or accreditation requirements equal to the state in which a school is located. Each school shall follow the prescribed evaluation cycle. The primary purpose of this evaluation will be to determine the effects and quality of school programs and to improve the operations and services of the school programs.

(a) Each school's evaluation design or model will provide objective and quantitative analysis of each area to be evaluated. The analysis shall include product and process evaluation methods. The areas to be reviewed will include, but not be limited to, the following:

(1) School philosophy and objectives.

(2) Administrative and organizational requirements.

(3) Program planning and implementation.

(4) Curriculum development and instruction.

(5) Primary education.

(6) Program of studies for elementary, junior high/middle, and high schools.

(7) Grading requirements.

(8) Promotion requirements.

(9) High school graduation requirements.

(10) Library/media.

(11) Textbooks and other instructional materials.

(12) Counseling services.

(13) Medical and health services.

(14) Student activities.

(15) Transportation services.

(16) Staff certification and performance.

(17) Facilities (school plant).

(18) Parent and community concerns.

(19) School procedures and policies.

(20) School board operations.

(b) The Director, within six (6) months from the effective date of this part, shall distribute to each school, Agency or Area, as appropriate, a standardized needs assessment and evaluation instrument with guidelines for developing and applying a locally appropriate evaluation model for carrying out the requirements of this standard.

§36.51 Standard XVIII—Office of Indian Education Programs and Agency monitoring and evaluation responsibilities.

(a) The Office of Indian Education Programs shall monitor and evaluate the conformance of each Agency or Area, as appropriate, and its schools with the requirements of this part. In addition, it shall annually conduct onsite monitoring at one-third of the Agencies and Areas, thereby monitoring onsite each Agency and/or Area at least once every three (3) years. Within 45 days of the onsite visit, the Director shall issue to each Agency Superintendent for Educaton or Area Education Programs Administrator, as appropriate, a written report summarizing the monitoring findings and ordering, as necessary, required actions to correct noted deficiencies.

(b) Each Agency or Area, as appropriate, in conjunction with its school board shall monitor and evaluate the conformance of its school with the requirements of this part through an annual onsite evaluation involving one-third of the schools annually, thereby monitoring onsite each school at least once every three (3) years. Within 30 days of the onsite visit, the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate, shall issue to the local school supervisor and local school board a written report summarizing the findings and ordering, as necessary, required actions to correct noted deficiencies.

(c) Schools, Agencies, and Areas shall keep such records and submit to the responsible official or designee accurate reports at such times, in such form, and containing such information as determined by that official to be necessary to ascertain conformance with the requirements of this part.

(d) Schools, Agencies, and Areas shall permit access for examination purposes by the responsible official, or any duly authorized designee, to any school records and other sources of information which are related or pertinent to the requirements of this part.

(e) The Office of Indian Education Programs, Agency Superintendent for Education, or Area Education Programs Administrator, as appropriate, shall annually conduct a summative evaluation to assess the degree to which each Bureau educational policy and administrative procedure assists or hinders schools in complying with the requirements of this part. This will include, but not be limited to, the following actions:

(1) Evaluate current policies and practices not related to this part and the effects thereof on the amount of time and resources required which otherwise would be available for these standards;

(2) Modify any policies and practices which interfere with or compromise a school's capability to achieve and maintain these standards;

(3) Invite non-Federal agencies to evaluate the effects current policies and procedures have had on complying with the requirements of this part; and

(4) Submit annually to the Director a copy of the summative evaluation.

Subpart G—Compliance and Waivers

§ 36.60 Compliance for minimum academic standards.

Implementation of these standards shall begin immediately on the effective date of this part.

(a) A school is in compliance when it has met and satisfied all the requirements of these standards.

(b) Each school supervisor shall, within 45 days after the start of each school term, submit a compliance report to the local school board; within 15 days thereafter, the compliance report shall be submitted to the Agency Superintendent for Education or the Area Education Programs Administrator, as appropriate, which attests to whether a school is in compliance or noncompliance.

(c) In those instances where a school does not meet the requirements of these standards, the school supervisor shall inform the parents or legal guardians by letter no later than 60 days after the start of each school term.

(d) The compliance report shall contain the following:

(1) A written statement attesting to the fact that the school has or has not met all of the requirements.

(2) A specific listing of the requirements which have not been met.

(3) A summary of an action plan designed to correct deficiencies.

(4) A statement signed by the local school board attesting to the fact that it has been apprised of the school's compliance status and concurs or does not concur with the action plan to reach compliance.

(e) The Agency Superintendent for Education or the Area Education Programs Administrator, as appropriate, shall review each school's compliance report and shall provide the Director with a summative report by November 15 of each year which includes:

(1) A listing of those schools not in compliance.

(2) A detailed statement as to why each school is not in compliance and how it proposes to reach compliance.

(3) A plan of action outlining what actions the Agency Superintendent for Education or Area Education Programs Administrator will take to assist the school(s) to reach compliance.

(f) In the event a school is not in compliance for two consecutive years due to conditions which can be corrected locally, appropriate personnel actions shall be initiated at all applicable levels of school administration. Noncompliance may be acceptable grounds for dismissal.

(g) The Secretary shall submit to the appropriate committees of Congress at the time of the annual budget request a detailed plan to bring all Bureau and

contract schools up to the level required by the applicable standards established under section 1121 of Pub. L. 95–561, 25 U.S.C. 2001.

§36.61 Waivers and revisions.

(a) The tribal governing body, or the local school board if so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standard(s) established in this part, where the standard(s) is deemed by such body to be inappropriate and shall also have the authority to revise such standard(s) to take into account the specific needs of the tribe's children. This includes Bureau-operated schools. When the tribal governing body, or local school board if so designated by the tribal governing body, waives the standard(s) or part thereof, it shall within 60 days submit revised standard(s) to the Assistant Secretary for approval. In the interim between the waiver of the standard(s) and the approval of the revised standard(s), the standards of this part or minimum state standards shall apply to the affected school(s). In the notice of the waiver, the tribal governing body or its designee shall state whether the standards in this part or the minimum state standards apply to the affected school(s) for such interim period. The Assistant Secretary shall respond to the revised standard(s) within 45 days of receipt. Revised standard(s) shall be established by the Assistant Secretary unless specifically rejected by the Assistant Secretary for good cause and in writing. The written notice of rejection shall be sent to the affected tribe(s) and local school board. Such rejection shall be final. All revised standards shall be submitted to the Assistant Secretary in writing and will adhere to the following procedure:

(1) Waivers and revisions shall be submitted by November 15 each school year to accompany the school's annual standards compliance report as required by §36.60(b).

(2) The section or part of the standard to be waived must be specified, and the extent to which it is to be deviated from shall be described.

(3) A justification shall be included with a revised standard, which explains why the alternative standard is considered necessary.

(4) Measurable objectives of the alternative standard(s), the method of achieving the alternative standard(s), and the estimated cost of implementation must be stated.

(b) The Assistant Secretary shall assist the school board of an Indian-controlled contract school in the implementation of the standards established under this part if the school board requests that these standards, in part or in whole, be implemented. At the request of an Indian-controlled contract school board, the Assistant Secretary shall provide alternative or modified standards to those established in this part to take into account the needs of the Indian children and the Indian-controlled contract school.

[50 FR 36816, Sept. 9, 1985, as amended at 59 FR 61766, Dec. 1, 1994]

Subpart H—National Dormitory Criteria

§36.70 Scope of subpart.

This subpart contains the criteria and mandatory requirements for all dormitories. The individual employee responsibilities, based on the terminology used to designate specific employee positions and their assigned responsibilities, may vary depending upon whether the dormitory is a direct Bureau operation or contract operation.

§36.71 General provisions.

(a) The Homeliving Specialist is the administrative head of the dormitory who shall have sufficient autonomy and authority to ensure the successful functioning of all phases of the dormitory program, and, in dormitories attached to a school, shall report to the school supervisor.

(b) In situations where a Bureau-funded dormitory is maintained, operated, and administered separately from the academic program, this dormitory will ensure access to or provide a guidance program equal to the standards as those under §36.42 of this part.

(c) Students who qualify for residential services under the Exceptional

Child Program must have, in their individualized education plan, objectives that are to be met in the homeliving program. Documentation to support completion of these objectives is required.

(d) Dormitories with intense residential guidance programs shall have updated written descriptions of the programs with stated purposes, objectives, activities, staffing, and evaluation system. Each student diagnosed as being in need of intense guidance services shall have a file which contains the following:

(1) Documentation of eligibility according to the definition contained under 25 CFR 39.11(h);

(2) Documentation of a diagnosis of the student's needs;

(3) A placement decision signed by a minimum of three (3) staff members;

(4) An individualized treatment plan which includes:

(i) Referral date and referral sources;

(ii) Diagnosis identifying specific needs;

(iii) Specific goals and objectives to be met;

(iv) Record of specific services including beginning and ending dates;

(v) Designation of responsible staff person(s); and

(vi) A means by which the student's progress and the effectiveness of the individualized treatment plan can be periodically reviewed and reevaluated.

(e) Each dormitory program that does not have an academic program under subpart C shall make available career counseling information on educational and occupational opportunities and help students assess their aptitudes and interests. This shall be done on a continuing basis, beginning at the elementary level.

(f) Counseling services shall be made available for students during non-academic hours.

(g) Provisions shall be made to interpret to staff, students, and parents the administrative policies and practices of the dormitory. This provision shall be made in the form of a manual, handbook, brochure, or other written document that will be made available and explained to all who are interested. The topics shall include, but not be limited to, the following:

(1) Statement of philosophy and goals;

(2) Description of how policies are developed and administered; and

(3) A copy of the student rights handbook.

(h) Program will be designed and orientation programs implemented to facilitate the pupils' transition from elementary to middle school and from middle to high school, where appropriate.

(i) All dormitories shall provide and maintain a well-balanced student activities program based on assessment of both student and program needs. Programs shall provide opportunities for student participation in, but not limited to, activities that include special interest clubs, physical activities, student government, and cultural affairs. In addition, the following provisions shall be adhered to:

(1) Dormitories shall plan and provide for an intramural program that includes a variety of scholastic and sport activities.

(2) A plan of operation shall be submitted by each activity at the beginning of each school year to the school supervisor and approved by the school board. The plan shall include the purpose, structure, and coordination of all activities.

(3) All dormitories conducting fundraising activities are required to established a school/student activity bank account following school/student banking procedures outlined under 25 CFR § 31.7. All accounts shall be audited annually.

§ 36.72 Elementary level dormitories.

(a) Each dormitory program shall provide or have access to the services of a qualified counselor who holds a valid counselor certificate and has training and experience in dealing with elementary students.

(b) Counselors may be assigned minimal or temporary school supervisory duties. A school supervisor shall not serve in the capacity of counselor while holding the position of school supervisor.

(c) The dormitory program shall have the following ratios (ADM) for counselors:

Less than 75 students: ½ time counselor

75–150 students: 1 full-time counselor
151–225 students: 1 full-time and ½ time counselor
226–300 students: 2 full-time counselors

For dormitories that exceed 300 students (ADM), additional counselor time shall be provided according to the above ratio. Dormitories within an Agency are encouraged to try a variety of approaches to guidance service. In this arrangement, the counselor's time may be shared between dormitories. As long as one half-time, professionally-trained counselor is provided, the dormitory program may use supportive personnel and teachers to meet the ratio.

(d) Dormitory counselors' work hours shall be arranged to provide maximum availability of services to students when they are not in academic session.

§36.73 Secondary level dormitories.

(a) Each dormitory program shall provide or have access to the services of a qualified counselor who holds a valid counselor certificate and has training and experience dealing with secondary students.

(b) Counselors may be assigned minimal or temporary school supervisory duties. A school supervisor shall not serve in the capacity of a counselor while holding a position as a school supervisor.

(c) The dormitory program shall have the following ratios (ADM) for counselor:

Less than 100 students: ½ time counselor
100–199 students: 1 full-time counselor
200–300 students: 1 full-time and ½ time counselor

For dormitories that exceed 300 students (ADM), counselor time will be provided according to the above radio. As long as one half-time, professionally trained counselor is provided, the dormitory program may use supportive personnel and teachers to meet the ratio.

(d) Counselors' work hours shall be arranged to provide maximum availability of service to students when they are not in academic session.

§36.74 Homeliving (dormitory operations).

Staff shall be provided so that at least one adult is on duty at all times when students are in the dormitory. Each dormitory program shall include, but not be limited to, the following:

(a) Every dormitory facility shall be under the direct supervision of a dormitory manager. A building composed of separate wings or several floors shall be counted as one facility.

(b) Each dormitory operation shall provide the following minimum on-duty paraprofessional staff to student ratio (ADM):

	Ratio
Grades 1 to 6	
Weekdays:	
Mornings	1:30
During school hours	1:40
Evenings	1:30
Nights	1:40
Weekends:	
Mornings	1:30
Evenings	1:30
Nights	1:40
Grades 7 to 12	
Weekdays:	
Mornings	1:50
During school hours	1:80
Evenings	1:50
Nights	1:80
Weekends:	
Mornings	1:50
Evenings	1:50
Nights	1:80

Dormitory operations for grades one through eight are encouraged to provide additional staff aides during the time children in the primary grades are dressing and preparing for breakfast and school. Staff ratios on weekends shall be reduced at boarding schools to adjust for those students who go home, according to the above ratio.

(c) Group instruction and discussion session shall be held on various topics at least on a monthly basis, but preferably on a weekly basis. Topics to be presented may be determined by a committee comprised of students, staff, administrators, and parents. These topics shall include discussions of problems or needs that exist at the location and/or community.

(d) Each dormitory facility shall be cleaned daily when in operation to provide a safe and sanitary environment. Student assistance may be utilized; however, the responsibility for the cleanliness, safety, and sanitation of

the facility shall rest with the dormitory administrator. Bed and bath linen shall be changed a minimum of once per week. Necessary toiletry items shall be made available to those students who are economically unable to provide them.

(e) Dormitory operations shall have access to clothes washers and dryers. Equipment shall be utilized only for students' clothing. In grades one through six, residential paraprofessionals shall be responsible for the upkeep of clothing. Students in grades seven through 12 shall be responsible for the upkeeping of their own clothing. In grades seven through 12, students shall be allowed to wash and dry their clothing after training is given in using the machines. Contracting for student clothing care may also be utilized under this part.

(f) A system of student accountability shall be established at each residential facility. Minimum requirements of the system shall include an attendance procedure at least four (4) times per normal waking day for grades one through eight and two (2) times for grades nine through 12. However, students in grades seven through 12 may be allowed to have a self check-in system provided that an employee reviews the roster within an hour of each designated check-in time. During sleeping hours, students in grades one through eight shall be checked on an hourly basis; students in grades nine through 12 shall be checked every two (2) hours. At the start of each school day, residential facilities supervisors shall report to the school office which students will not be in attendance. An intra-school pass system shall be developed and implemented.

(g) Students shall be permitted to be released from the dormitory overnight, on weekends, or during vacation periods only when prior written approval is granted by the parent or guardian and only if the local school board adopts a policy governing the conditions of release. Such policy must adhere to the concept that the dormitory/school is acting in *''loco parentis.''*

(h) Dormitory facilities shall have a designated room or rooms which shall be utilized as an isolation room(s) for student health care needs. Students isolated in such room(s) shall be checked on a minimum of an hourly basis.

(i) Each dormitory operation shall develop a written procedure for handling emergency situations. Such a procedure shall include names and telephone numbers of the responsible parties to contact in case of emergencies. Situations that shall be considered emergencies include life-threatening medical/health problems, power failures, walkaways, etc.

(j) A tutoring program shall be developed and implemented to assist those students having academic difficulties. Each dormitory operation shall provide a time and place where tutoring, homework, reading, and/or studying can be done for at least one hour daily.

(k) The responsible dormitory supervisor shall be accountable for reporting any hazardous or defective items in the dormitory to the appropriate supervisor and plant manager.

(l) Leisure-time activities shall be provided to dormitory students. These activities may include recreational activities, clubs, arts/crafts, and reading of newspapers and periodicals. Television viewing shall not be considered as structured leisure time unless a scheduled program provides educational benefit.

(m) Lines of communication shall be established with other local social service agencies to assist in the resolution of problems that may extend beyond the confines of the dormitory. These agencies may be State, tribal, or Federal.

(n) Dormitory personnel will receive training in emergency first aid procedures.

§ 36.75 Space and privacy.

The configuration of sleeping space and other living areas will vary according to the grade levels of the occupants; however, sleeping rooms shall provide sufficient space and privacy for the resident students. The following space and privacy requirements shall be required for dormitories. A dormitory shall be considered at capacity when the addition of one more student would put the school out of compliance with the space standard; and additional

students shall not be admitted for residential purposes.

(a) Dormitory facilities for grades one through eight shall have space footage averaging from 40 to 60 square feet per student for sleeping rooms, exclusive of furniture (wardrobe, desks, beds, etc.).

(b) Dormitories housing students who are in grades nine through 12 shall provide sleeping rooms with a per student square footage averaging from 50 to 70 square feet, exclusive of furniture (wardrobe, desks, beds, etc.).

(c) When new dormitories are constructed or existing dormitories are remodeled, sleeping rooms shall be constructed not to exceed a maximum of four students per room for grades one through 12.

(d) Each peripheral dormitory shall have a set of encyclopedias, one dictionary for every ten students (ADM), and ten other general reference materials such as an atlas or periodical subscription.

§36.76 Compliance for the National Criteria for Dormitory Situations.

Implementation of the National Criteria for Dormitory Situations shall begin immediately on the effective date of this part. A dormitory is in compliance when it has met and satisfied all the requirements under subpart H.

(a) The education supervisor(s) or peripheral dormitory supervisor shall report to their supervisor(s) within 45 days after the start of each school term with a compliance report to the local school board that attests to whether a dormitory is in compliance or noncompliance; within 15 days, the compliance report shall be submitted to the Agency Superintendent for Education or Area Education Programs Administrator, as appropriate.

(b) The school supervisor or the peripheral dormitory supervisor shall notify in writing each parent or legal guardian of the dormitory noncompliance status within 60 days after the beginning of the school term.

(c) The compliance report shall contain the following:

(1) A written statement attesting to the fact that the dormitory has or has not met all of the requirements.

(2) A specific listing of the requirements that have not been met.

(3) A detailed action plan designed to correct deficiencies.

(4) A statement signed by the local school board attesting to the fact that it has been apprised of the school's compliance status and concurs or does not concur with the action plan to reach compliance.

(d) The Agency Superintendent for Education or the Area Education Programs Administrator, as appropriate, shall review each dormitory compliance report and shall provide the Director with a detailed report by November 15 each year which shall include:

(1) A list of dormitories indicating those not in compliance.

(2) A detailed statement as to why each school indicated is not in compliance and how it is proposed to reach compliance.

(3) A plan of action outlining what actions the Agency or Area education line officers, as appropriate, will take to assist the dormitories to reach compliance.

(e) In the event a dormitory is not in compliance for two consecutive years due to conditions which can be corrected locally, appropriate personnel actions shall be initiated at all appropriate levels of school/dormitory administration. Noncompliance may be grounds for dismissal.

(f) The Secretary shall submit to the appropriate committees of Congress at the time of the annual budget request a detailed plan to bring all Bureau and contract boarding schools up to the criteria established under section 1122 of Pub. L. 95–561, and 25 U.S.C. 2002. Such plan shall include, but not be limited to, predictions for the relative need for each boarding school in relation to the criteria established under this section and specific cost estimates for meeting such criteria at each school up to the level required by such criteria.

§36.77 Waivers and revisions.

(a) The tribal governing body (tribe), or the local school board (LSB), if so designated by the tribe, shall have the local authority to waive or revise in part or in whole, the standard(s) established in this part if the standard(s) are

determined to be inappropriate or if they fail to take into account specific needs of the tribe's children. This provision includes both tribal and Bureau-operated schools. When the tribe or LSB, if designated by the tribe, waives or revises a standard, it shall submit the waiver or revision to the Assistant Secretary for approval within 60 days. Until this approval is obtained, the standard of this part or minimum state standards shall apply to the affected school(s).

(b) All revised standards shall be submitted to the Assistant Secretary in writing in accordance with the following procedure:

(1) Waivers and revisions shall be submitted by November 15 each school year to accompany the dormitory's annual standards compliance report.

(2) The section or part to be waived shall be specified, and the extent to which it is to be deviated from shall be described.

(3) A justification explaining why the alternative standard is determined necessary shall be included with the revised standard.

(4) Measurable objectives and the method of achieving the alternative standard along with the estimated cost of implementation shall be stated.

(c) The Assistant Secretary shall respond in writing within 45 days of receipt of the waiver or revision. The waiver shall be granted or the revision shall be accepted by the Assistant Secretary unless specifically rejected for good cause and in writing. The written rejection shall be sent to the affected tribe(s) and LSB. This rejection shall be final. The waiver is granted or revision is established automatically on the 46th day of receipt if no written response is provided by the Assistant Secretary.

(d) The Assistant Secretary shall assist the school board of an Indian-controlled contract school in the implementation of the standards established in this part if the school board requests that these standards, in part or in whole, be implemented. At the request of an Indian-controlled contract school board, the Assistant Secretary shall provide alternative or modified standards to those established in this part to take into account the needs of the Indian children and Indian-controlled contract school.

[59 FR 61766, Dec. 1, 1994]

PART 38—EDUCATION PERSONNEL

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38.1 Scope.
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38.12 Leave system for education personnel.
38.13 Status quo employees in education positions.
38.14 Voluntary services.

AUTHORITY: Secs. 1131 and 1135 of the Act of November 1, 1978 (92 Stat. 2322 and 2327, 25 U.S.C. 2011 and 2015); Secs. 511 and 512 of Pub. L. 98–511; and secs. 8 and 9 of Pub. L. 99–89 (Indian Education Technical Amendments Act of 1985) and Title V of Pub. L. 100–297 (Indian Education Amendments of 1988).

SOURCE: 53 FR 37678, Sept. 27, 1988, unless otherwise noted.

§ 38.1 Scope.

(a) *Primary scope.* This part applies to all individuals appointed or converted to contract education positions as defined in § 38.3 in the Bureau of Indian Affairs after November 1, 1979. This part applies to elementary and secondary school positions and agency education positions.

(b) *Secondary scope.* Section 38.13 applies to employees with continuing tenure in both the competitive and excepted service who encumber education positions.

(c) *Other.* Where 25 CFR part 38 and a negotiated labor relations agreement conflict, the negotiated agreement will govern.

§ 38.2 Information collection.

(a) The information collection requirements contained in § 38.5 use Standard Form 171 for collection, and have been approved by OMB under 25 U.S.C. 2011 and 2015 and assigned approval number 3206–0012. The sponsoring agency for the Standard Form 171,

is the Office of Personnel Management. The information is being collected to determine eligibility for employment. The information will be used to rate the qualifications of applicants for employment. Response is mandatory for employment.

(b) The information collection requirement for § 38.14, Voluntary Services has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0116. The information is being collected to determine an applicants eligibility and selection for appropriate volunteer assignments. Response is voluntary.

§ 38.3 Definitions.

As used in this part, the term:

Agency means the current organizational unit of the Bureau, which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes.

Agency school board as defined in section 1139(1), of Pub. L. 95–561, means a body, the members of which are appointed by the school boards of the schools located within such Agency. The number of such members shall be determined by the Director in consultation with the affected tribes. In Agencies serving a single school, the school board of that school shall function as the Agency School Board.

Agency Superintendent for Education (ASE) means the Bureau official in charge of education functions at an Agency Office and to whom the school supervisor(s) and other educators under the Agency's jurisdiction, report.

Area Education Programs Administrator (AEPA) means the Bureau official in charge of an Area Education Office that provides services to off-reservation residential schools, peripheral dormitories or on-reservation BIA funded schools that are not served by an Agency Superintendent for Education. The AEPA may also provide education program services to tribes not having an Agency Superintendent for Education at their agency. The AEPA has no line authority over agency education programs that are under the jurisdiction of an Agency Superintendent for Education.

Assistant Secretary means the Assistant Secretary for Indian Affairs of the Department of the Interior.

Bureau means the Bureau of Indian Affairs of the Department of the Interior.

Consult, as used in this part and provided in section 1131(d)(1) (B) and (C) of Pub. L. 95–561, means providing pertinent information to and being available for discussion with the school board, giving the school board the opportunity to reply and giving due consideration to the school board's response, subject to appeal rights provided in § 38.7 (a), (b) and (c), and § 38.9(e)(3).

Director means the Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs) in the Bureau.

Discharge means the separation of an employee during the term of the contract.

Education function means the administration and implementation of the Bureau's education programs and activities (including school operations).

Education position, means a position in the Bureau the duties and responsibilities of which:

(a) Are performed on a school term basis principally in a Bureau elementary and secondary school which involve:

(1) Classroom or other instruction or the supervision or direction of classroom or other instruction;

(2) Any activity (other than teaching) that requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education; or

(3) Any activity in or related to the field of education notwithstanding that academic credits in educational theory and practice are not a formal requirement for the conduct of such activity; or

(4) Support services at or associated with the site of the school; or

(b) Are performed at the Agency level of the Bureau and involve the implementation of education-related Bureau programs. The position of Agency Superintendent for Education is excluded.

Educator, as defined in section 1131(n)(2) of Pub. L. 95–561 means an individual whose services are required, or who is employed, in an education position as defined in § 38.3.

Employment contract means a signed agreement executed by and between the Bureau and the individual employee hired or converted under this part, that specifies the position title, period of employment, and compensation attached thereto.

Involuntary change in position means the release of an employee from his/her position instigated by a change in program or other occurrence beyond the control of the employee.

Local school board, as used in this part and defined in section 1139(7) of Pub. L. 95–561, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, the body elected by the parents of the Indian children attending a Bureau-operated school. In schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected and the number of such members shall be determined by the Director in consultation with the affected tribes.

Probationary period means the extension of the appointed process during which a person's character and ability to satisfactorily meet the requirements of the position are reviewed.

School board means an Agency school board or a local school board.

School supervisor means the Bureau official in charge of a Bureau school who reports to an Agency Superintendent for Education. In the case of an off-reservation residential school(s), and, in some cases, peripheral dormitories and on-reservation day schools, the school supervisor shall report to the Area Education Programs Administrator.

School term is that term which begins usually in the last summer or fall and ends in the Spring. It may be interrupted by one or more vacations.

§ 38.4 Education positions.

(a) The Director shall establish the kinds of positions required to carry out the Bureau's education function. No position will be established or continued for which:

(1) Funds are not available; or

(2) There is not a clearly demonstrable need and intent for it to carry out an education function.

(b) Positions established for regular school operations will be restricted to school term or program duration. Particular care shall be taken to insure that year-long positions are not established unless they are clearly required and involve essential 12-month assignments.

§ 38.5 Qualifications for educators.

(a) *Qualifications related to positions.* Job qualification requirements shall be at least equivalent to those established by the appropriate licensing and certification authorities of the State in which the position is located.

(b) *Qualifications related to individuals.* An applicant for an education position must establish that he/she meets the requirements of the position by submitting an application and a college transcript, as appropriate, to the local school supervisor, Agency Superintendent for Education (ASE), Area Education Programs Administrator (AEPA), or Director and appearing for an interview if requested by the official involved. The applicant's education and experience will be subject to verification by the ASE or the AEPA. Employees who falsify experience and employment history may be subject to disciplinary action or discharge from the position to which he/she is appointed.

(1) School boards may waive formal education and State certification requirements for tribal members who are hired to teach tribal culture and language.

(2) Tribal members appointed under this waiver may not have their basic pay rate set higher than the rate paid to qualified educators in teaching positions at that school.

(c) *Identification of qualified individuals.* The Director shall require each ASE, AEPA, and other appropriate local official in the education program organization to maintain lists of qualified and interviewed applicants for each of the kinds of established positions. Applications on file shall be

purged annually. Applicants whose qualifications are established and who indicate an interest in working in specified locations will be included on those local applicant lists. The Director shall maintain a national list of qualified applicants for each of the kinds of positions established. Applicants whose qualifications are established and who either do not indicate an interest in a specific location or indicate an interest in working in any location will be entered on the national list. The national list is a secondary source of applicants.

(d) *Special recruitment and training for Indian educators.* The Director shall review annually the Bureau's ''Recruitment of Indian Educators Program'' and update as necessary. The Director will define individual training plans for trainees and subsequent promotional opportunities for advancement based upon satisfactory job performance in this program.

§ 38.6 Basic compensation for educators and education positions.

(a) *Schedule of basic compensation rates.* The Director shall establish a schedule for each pay level specified in part 62 of the Bureau of Indian Affairs Manual (BIAM). The schedule will be revised at the same time as and be consistent with rates in effect under the General Schedule or Federal Wage System for individuals with comparable qualifications, and holding comparable positions.

(b) *Range of pay rates for positions within pay levels.* The range of basic compensation rates for positions assigned to each pay level will be consistent with the General Schedule or Federal Wage System rates that would otherwise be applicable if the position were classified under chapter 51 or subchapter IV of chapter 53 of title 5 of the United States Code (U.S.C.). The maximum pay shall not exceed step 10 of the comparable General Schedule position by more than ten percent.

(c) *Schedule of compensation rates for teachers and counselors.* The basic compensation for teachers and counselors, including dormitory counselors and homeliving counselors, shall be determined in accordance with rates set by the Defense Department Overseas Teachers Pay and Personnel Practices Act. The schedule used shall be the current published schedule for the school year beginning on or after July 1 of each year.

(d) *Adjusting employee basic compensation rates.* (1) Except for employees occupying positions of teachers and counselors, including dormitory counselors and homeliving counselors, adjustments in an employee's basic compensation made in connection with each contract renewal will be based on the following:

(i) Contract renewal incentive—one pay increment for each renewal, not to exceed four increments, unless the educator is covered by a negotiated labor union agreement.

(ii) Performance—employees whose performance is rated ''above satisfactory''; one pay increment; employees whose performance is rated ''outstanding''; two pay increments.

(2) Pay increments based on education may be awarded as outlined in 62 BIAM.

(e) *Special additions to basic compensation.* The Director is authorized to established the following special additions to rates of basic compensation:

(1) The Director may authorize payment of a staffing differential not exceeding 25 per centum of the rate of basic compensation based on a formally-documented request by an ASE or AEPA. Such a staffing differential shall only be authorized in writing when the Director determines that:

(i) It is warranted by the geographic isolation of the work site or other unusually difficult environmental working or living conditions and/or,

(ii) It is necessary as a recruitment or retention incentive. This staffing differential is to be computed on the basic schedule rate before any other additions are computed.

(2) Special rates may be established for recruitment and retention applicable only to a specific position or to specific types of positions in specific locations based on a formally documented request by an ASE or AEPA and submitted to the Director for approval.

(f) *Payment of compensation to educators.* This section applies to those individuals employed under the provisions of section 1131(m) of Pub. L. 95–561 or title 5 U.S.C.

(1) *Pay periods.* Educators shall be paid on the basis of a biweekly pay period during the term of the contract. Chapter 55 of title 5 U.S.C. applies to the administration of pay for educators, except that section 1131(m) of Pub. L. 95–561 provides that 5 U.S.C. 5533 does not apply with respect to the receipt of pay by educators during summer recess under certain circumstances.

(2) *Pay for contract educators.* When an educator is appointed, payment under the contract is to begin as of the effective date of the contract. If an educator resigns or is discharged before the expiration of the term of the contract, pay ceases as of the date of resignation or discharge.

(3) *Prorating of pay.* Within 30 days prior to the beginning of the academic school term, each educator must elect whether to have the annual contractual rate or basic pay prorated over the contractual academic school term, or to have the basic pay prorated over a 12-month period.

(i) Each educator may change such election once during the academic school term, provided notice is given two weeks prior to the end of the fifth month after the beginning of the academic school term.

(ii) An educator who elects a 12-month basis of prorated pay may further elect to be paid in one lump sum at the end of the academic school term for the then remaining amount of rate of basic pay otherwise due, provided notice is given four weeks prior to the end of the academic school term.

(iii) No educator shall suffer a loss of pay or benefits because of elections made under this section.

(4) *Stipends for extracurricular activities.* An employee, if assigned to sponsor an approved extracurricular activity, may elect annually at the beginning of the contract to be paid a stipend in lieu of overtime premium pay or compensatory time when the employee performs additional activities to provide services to students or otherwise support the school's academic and social programs.

(i) The Director is authorized to establish a schedule of stipends for each Bureau Area, taking into consideration types of activities to be compensated and payments provided by public school districts in or near the Area.

(ii) The stipend shall be a supplement to the employee's base pay and is not a part of salary for retirement computation purposes.

(iii) The employee shall be paid the stipend in equal payments over the period of the extracurricular activity.

[53 FR 37678, Sept. 27, 1988, as amended at 54 FR 46374, Nov. 3, 1989]

§ 38.7 Appointment of educators.

(a) *Local school employees.* Local Bureau school employees shall be appointed only by the school supervisor. Before the local school employee is employed, the school board shall be consulted. An individual's appointment may be finalized only upon receipt of a formal written determination certified by the local school board under such uniform procedures as it may adopt. Written determination by the school board should be received within a reasonable period, but not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The local school board shall use the same written procedure to disapprove an appointment. The school supervisor may appeal to the ASE, or, where appropriate, to the AEPA, any determination by the local school board concerning an individual's appointment. A written statement of appeal describing the action and the reasons the supervisor believes such action should be overturned must be filed within 10 days of receipt of the action from the local school board. A copy of such statement shall be submitted to the school board and the board shall be afforded an opportunity to respond, not to exceed 10 calendar days, in writing, to the appeal. After reviewing such written appeal and response, the ASE or AEPA may, for cause, overturn the action of the local school board. The ASE or AEPA must transmit the determination of the appeal (in the form of a written opinion) to the board and to

the supervisor identifying the reasons for overturning the action within 10 calender days. Failure to act within the 10 calendar day period shall have the effect of approving the local school board's determination.

(b) *School supervisors.* School supervisors may be appointed only by the ASE, except the AEPA shall appoint school supervisors for off-reservation boarding schools and those few other schools supervised by the AEPA. The school board shall be consulted before the school supervisor is employed. The appointment may be finalized upon receipt of a formal written determination certified by the school board under any uniform procedures as it may adopt. Written determination by the school board shall be received within a reasonable period, but not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The school board shall use the same procedure to disapprove an appontment. Within 20 calendar days of receipt of any determination by the school board concerning an individual's appointment, the ASE or AEPA, as appropriate, may appeal to the Director by filing a written statement describing the determination and the reasons the supervisor believes the determination should be overturned. A copy of the statement shall be submitted to the local school board and the board shall be afforded an opportunity to respond, within 10 calendar days, in writing, to such an appeal. The Director may reverse the determination for cause set out in writing to the school board. Within 20 calendar days of the school board's response, the Director shall transmit the determination of the appeal (in the form of a written opinion) to the board and to the ASE or AEPA identifying the reasons for overturning the determination. Failure by the Director to act within the 20 calendar day period shall have the effect of approving the school board's determination.

(c) *Agency office education program employees.* Appointments to Agency office education positions may be made only by the ASE. The Agency school board shall be consulted before the agency education employee is employed, and the appointment may be finalized upon receipt of a formal, written determination certified by the Agency school board under any uniform procedures as it may adopt. Written determination by the school board shall be received within a reasonable period, but not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approving the proposed appointment. The Agency school board shall use the same written procedure to disapprove an appointment. Within 20 calendar days of receipt of any determination by the school board concerning an individual's appointment, the ASE may appeal to the Director by filing a written statement describing the determination and the reasons the supervisor believes the determination should be overturned. A copy of the statement shall be submitted to the Agency school board and the board shall be afforded an opportunity to respond, within 10 calendar days, in writing, to such appeal. After reviewing the written appeal and response, the Director may, for cause, overturn the determination of the Agency school board. Within 20 days of the board's response, the Director shall transmit the determination of the appeal (in the form of a written opinion) to the board and to the ASE identifying the reasons for overturning the determination. Failure of the Director to act within the 20 calendar day period shall have the effect of approving the school's board's determination.

(d) *Employment contracts.* The Bureau shall issue employment contracts each year for individuals employed in contract education positions at the Agency or school levels.

(e) *Absence of local school boards.* Where a local school board has not been established in accordance with section 1139(7) Pub. L. 95–561 with respect to a Bureau school, or where a school board is not operational, and the local school board is required to be given a notice or required to be consulted by statute or these regulations, the official involved shall notify or consult with the Agency school board serving the tribe(s) to which the parents of the Indian children atending that school belong, or, in that absence,

the tribal organization(s) of the tribe(s) involved.

(f) *Provisional contracts.* Provisional certification or other limited certificates from the State are not considered full certification and only a provisional contract may be issued. There may be circumstances when no individual who has met the full certification or experience requirements is available for a professional position or when a status quo employee who does not meet full certification or experience requirements desires to convert to contract. When this situation exists, a provisional contract may be issued in accordance with the following:

(1) The contract will be made only:

(i) After it is determined that an individual already meeting certification or experience requirements is not available; or

(ii) For conversion of a status quo employee who does not yet meet all established position requirements.

(2) Consultation with the appropriate school board is required prior to the contract.

(3) The contract may be of 12-month or school-term duration.

(4) The employee will be required to make satisfactory progress toward meeting full qualification requirements.

(5) If the employee fails to meet the requirements established under § 38.7(f)(4), the contract will be terminated. Such termination cannot be grieved or appealed.

(g) *Conditional appointment.* As provided in section 1131(d)(4), Pub. L. 95–561, if an individual who has applied at both the national and local levels is appointed from a local list of applicants, the appointment shall be conditional for 90 days. During that period, the individual's application and background shall be examined to determine if there is a more qualified individual for the position. Removal during this period is not subject to discharge, hearing or grievance procedures.

(h) *Short-term contracts.* (1) There may be circumstances where immediate action is necessary and it is impossible to consult with the local school board. When this situation exists short-term contracts may be made by the school supervisor in accordance with the following:

(i) The length of the contract will not exceed 60 days, or the next regularly scheduled school board meeting, whichever comes first.

(ii) If the board meets and does not take action on the individual in question, the short-term contract may be extended for the duration of the school year.

(iii) It shall be the responsibility of the school supervisor to fully inform the local school board of all such short-term contracts. Failure to do so may be cited as reason to discharge the school supervisor if so requested by the board.

(2) The local school board may authorize the school supervisor to make an emergency short-term contract to classroom, dormitory and other positions directly related to the health and safety of students. When this situation exists, short-term contracts may be made in accordance with the following:

(i) If local and agency lists of qualified applicants are exhausted, short-term contracts may be made without regard to qualifications for the position;

(ii) The pay level will be based on the qualifications of the individual employed rather than the requirements of the position, if the qualifications of the individual are lower than required;

(iii) The short-term contract may not exceed the school term and may not be renewed or extended;

(iv) Every 60 days the school supervisor will determine if qualified individuals have been placed on the local or agency lists. If a qualified individual on the list accepts employment, the school supervisor must terminate the emergency appointment at the time the qualified individual is appointed.

(i) *Temporary contracts.* There may be circumstances where a specific position is needed for a period of one year or less. Under these conditions a position may be advertised as a temporary position and be filled under a temporary contract. Such contract requires the same school board approval as a school year contract. If required for the completion of the activities specified in the original announcement, the position,

may with school board approval be extended for up to one additional year. Temporary contracts may be terminated at any time and this action is not subject to approval or grievance procedures.

(j) *Waiver of Indian preference.* Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action within the purview of this section respecting an application or employee not entitled to Indian preference if each tribal organization concerned grants, in writing, a waiver of the application of such laws with respect to such personnel action, where such a waiver is in writing deemed to be a necessity by the tribal organization, except that this shall in no way relieve the Bureau of its responsibility to issue timely and adequate announcements and advertisements concerning any such personnel action if it is intended to fill a vacancy (no matter how such vacancy is created). When a waiver is granted, it shall apply only to that particular position and as long as the employee remains in that position.

(k) *Prohibited reappointment.* An educator who voluntarily terminates employment before the end of the school term may not be appointed to another Bureau education position before the beginning of the following school term. An educator will not be deemed to have voluntarily terminated employment if transferred elsewhere with the consent of the local school or Agency boards.

(l) *Contract renewals.* The appropriate school board shall be notified in writing by the school supervisor and/or ASE or AEPA not less than 90 days before the end of the school term whether or not an individual's contract is recommended for renewal.

(1) If the school board disagrees with the school supervisor's or ASE's or AEPA's recommendations, the board will submit a formal, written certification of its determinations to the school supervisor or ASE or AEPA within 25 days. If the board's determinations are not received within the 25 days, the school supervisor or ASE or AEPA shall issue the 60 day notification of renewal or nonrenawal to the individual as required under § 38.8.

(2) When the school board submits its determination within the 25 days and determines that a contract will be renewed, or nonrenewed, the appropriate official shall issue the required renewal notice, or nonrenawal, or appeal the determination of the school board to the appropriate official who will make a determination in accordance with the appeal procedure is § 38.7(a) of this part. After the probationary period, if the determination is that the contract will not be renewed, the procedures specified in § 38.8 shall apply.

§ 38.8 Nonrenewal of contract.

Where the determination is made that an employee's contract shall not be renewed for the following year, the following procedure will apply to those employees who have completed three full continuous school terms of service under consecutive contract appointments and satisfactory performance in the same or comparable education positions.

(a) The employee will be given a written notice of the action and the reasons thereof not less than 60 days before the end of the school term.

(b) The employee will be given 10 calendar days to request an informal hearing before the appropriate official or body. Upon request, the employee may be given official time, not to exceed eight hours, to prepare a written response to the reason(s).

(c) If so requested, an informal hearing shall be held within 30 calendar days of receipt of the request.

(d) The appropriate official or body will render a written determination within seven calendar days after the informal hearing.

(e) The employee has a right to request an administrative review by the ASE or AEPA of the determination within 10 calendar days of that determination. The ASE or AEPA then has 20 calendar days to render a final decision. Where the employee is the supervisor of the school or an agency education employee, any appeal of the ASE or AEPA would be addressed to the Director for a decision. If the Director or ASE's or AEPA's decision overturns the appropriate official or bodies determination, the appropriate official or body will be notified of the

reasons in writing. Failure by the Director or ASE or AEPA to act within the 20 days will sustain the determination. This completes the administrative appeal process.

(f) Failure of any of the parties to meet the requirements of the above procedures will serve to negate the particular action sought by the negligent party.

(g) Those employees with less than three full continuous school terms of consecutive contract appointments are serving a probationary period. Nonrenewal of his/her contract will be considered a continuation of the examining process. This action cannot be appealed or grieved.

(h) Independent of the procedures outlined in this section, the school supervisor or ASE or AEPA, for applicable positions, shall be required to submit to the ASE or AEPA or appropriate higher authority all nonrenewal actions. Within 60 days, the ASE or AEPA shall review the nonrenewal actions and may overturn the determination of nonrenewal. In the event that the ASE or AEPA makes a decision to overturn the school board determination, the ASE or AEPA shall notify the school board in writing of his/her reasons for doing so.

(i) No more than the substantial standard of evidence shall be required to sustain the nonrenewal.

(j) A procedural error shall not be grounds for overturning a determination of nonrenewal unless the employee shows harmful error in the application of the Agency's procedures in arriving at such a decision. For purposes of this section, ''harmful error'' means error by the Agency in the application of its procedures which, in the absence or cure of the error, might have caused the Agency to reach a conclusion different than the one reached. The burden is upon the appellant to show that based upon the record as a whole, the error was harmful. i.e., caused substantial harm or prejudice to his/her rights.

(k) Nonrenewal of a contract is not discharge and will not follow the discharge procedures.

§ 38.9 Discharge of educators.

(a) *Discharge for cause.* Educators covered under the provision of this section are excluded from coverage under 5 U.S.C. 7511 and 4303. In order to provide due process for educators, the Director shall publish in 62 BIAM representative conditions that could result in the discharge of educators for cause and procedures to be followed in discharge cases.

(b) *Discharge for inadequate performance.* Action to remove educators for inadequate performance will be taken for failure to meet performance standards established under 5 U.S.C. 4302. Performance standards for all educators will include, among others, lack of student achievement. Willful failure to exercise properly assigned supervisory responsibilities by supervisors shall also be cause for discharge.

(c) *Other discharge.* The Director shall publish in 62 BIAM a description of the budgetary and programmatic conditions that may result in the discharge of educators for other than cause during the school term. The individual's personnel record will clearly reflect that the action taken is based upon budgetary or programmatic restraints and is not a reflection on the employee's performance.

(d) *Procedures for discharge for cause.* The Director shall publish in 62 BIAM the procedural steps to be followed by school supervisors, ASE's, and AEPA's in discharge for cause cases. These procedures shall provide (among other things) for the following:

(1) The educator to be discharged shall receive a written notice of the proposal, specifying the causes or complaints upon which the proposal is based, not less than 30 calendar days before the discharge. However, this shall not prohibit the exclusion of the individual from the education facility in cases where exclusion is required for the safety of the students or the orderly operation of the facility.

(2) A reasonable time, but not less than 10 calendar days, will be allotted for the individual to make written and/or oral responses to the charge.

(3) An opportunity will be afforded the individual to review the material relied upon to support the charge.

(4) Official time, not to exceed eight hours, will be provided to the individual to prepare a response to the charge.

(5) The educator may elect to have a representative and shall furnish the identity of any representative to the ASE or AEPA. The ASE or AEPA may disallow, as an employee representative, any individual whose activities as a representative would cause a conflict of interest or position, or an employee whose release from his or her official position would give rise to unreasonable costs to the Government, or when priority work assignment precludes his or her release from official duties. The terms of any applicable collective bargaining agreement and 5 U.S.C. 7114(a)(5) shall govern representation of employees in an exclusive bargaining unit.

(6) The individual has a right to a final decision made by the appropriate level of supervision.

(7) The individual has a right to appeal the final decision and have the merits of the case reviewed by a Departmental official not previously involved in the case. This right includes entitlement to a hearing upon request under procedures in accordance with the requirements of due process under section 1131(e)(1)(B) of Pub. L. 95–561.

(e) *School board action.* (1) The appropriate school board shall be notified as soon as possible, but in no case later than 10 calendar days from the date of issue of the notice of intent to discharge.

(2) The appropriate school board, under any uniform procedure as it may adopt, may issue a formal written certification to the school supervisor, ASE, or AEPA either approving or disapproving the discharge before the expiration of the notice period and before actual discharge. Failure to respond before the expiration of the notice period will have the effect of approving the discharge.

(3) The school supervisor initiating a discharge action may appeal the board's determination to the ASE or AEPA within 10 calendar days of receipt of the board's notice. The ASE or AEPA initiating a discharge may appeal the board's determination to the Director within 10 calendar days of receipt of the board's notice. Within 20 calendar days following the receipt of an appeal, the reviewing official may, for good cause, reverse the school board's determination by a notice in writing to the board. Failure to act within 20 calendar days shall have the effect of approving the board's determination.

(f) *School board recommendations for discharge.* School boards may recommend in writing to school supervisors, ASE's, or AEPA's, and the Director that individuals in the education program be discharged. These written recommendations may follow any procedures formally established internally by the school board or tribal government. However, the written recommendations must contain specific causes or complaints that may be verified or established by investigation of factual situations. The official receiving a board recommendation for discharge of an individual shall acknowledge the recommendation in writing within 10 calendar days of receipt and proceed with a fact finding investigation. The official who finally disposes of the recommendation shall notify the school board of the disposition in writing within 60 calendar days of initiation of the fact finding investigation.

§38.10 Conditions of employment of educators.

(a) *Supervision not delegated to school boards.* School boards may not direct, control, or interrupt the day-to-day activities of BIA employees carrying out Bureau-operated education programs.

(b) *Employee handbook.* Employee handbook and recruiting guides shall be developed by each local school or agency to provide specific information regarding:

(1) The working and hiring conditions for various tribal jurisdictions and Bureau locations;

(2) The need for all education personnel to adapt to local situations; and

(3) The requirement of all education personnel to comply with and support duly adopted school board policies, including those relating to tribal culture or language.

(c) *Contract renewal notification.* Employees will be notified 60 calendar days before the end of the school term of the intent to renew or not renew their contract. If an individual's contract is to be renewed, the individual must agree in writing to serve for the

next school term. This agreement must be received within 14 calendar days of the date of the notice in order to complete the contract renewal. If this agreement is not received by the fourteenth day, the employee has voluntarily forfeited his or her right to continuing employment. If an individual agrees to serve for the next school term and fails to report for duty at the beginning of the next school term, the contract will be terminated and the individual's future appointment will be subject to the restriction in § 38.7(k) of this part.

(d) *Dual compensation.* An employee accepting a renewal of a school term contract may be appointed to another Federal position during the school recess period without regard to the dual compensation regulations in 5 U.S.C. 5533.

(e) *Discrimination complaints.* Equal Employment Opportunity (EEO) procedures established under 29 CFR part 1613 are applicable to contract employees under this part. It is the policy of the BIA that all employees and applicants for employment shall be treated equally when considered for employment or benefits of employment, regardless of race, color, sex, religion, national origin, age, or mental or physical health (handicap), within the parameters of Indian preference.

(f) *Grievance procedures.* The Director shall publish in 62 BIAM procedures for the rapid and equitable resolution of grievances. In locations and for positions covered by an exclusive bargaining agreement, the negotiated grievance procedure is the exclusive avenue of redress for all matters within the scope of the negotiated grievance procedure.

(g) *Performance evaluation.* The minimum number of times a supervisor shall meet with an employee to discuss performance and suggest improvements shall be once every three months for the educator's first year at a school or Agency, and twice annually thereafter during the school term.

§ 38.11 Length of the regular school term.

The length of the regular school term shall be at least 180 student instructional days, unless a waiver has been granted under the provisions of 25 CFR 36.61.

§ 38.12 Leave system for education personnel.

(a) *Full-time school-term employees.* Employees on a full-time school-term contract are authorized the following types of leave:

(1) *Personal leave.* A school-term employee will receive 28 hours of personal leave to be used for personal reasons and 12 hours of emergency leave. This leave only accrues provided the length of the contract exceeds 24 weeks.

(i) The school-term employee will request the use of this leave in advance when it is for personal use or personal business (e.g., going to the bank, etc.). When this leave is requested for emergency purposes (e.g., death in immediate family), it will be requested immediately after the emergency is known, if possible, by the employee and before leave is taken or as soon as the supervisor reports to work on the official work day.

(ii) Final approval rests with the supervisor. This leave shall be taken only during the school term. No compensation for or carryover of unused leave is authorized.

(2) *Sick leave.* Sick leave is an absence approved by the supervisor for incapacity from duty due to injury or illness, not related to or incurred on-the-job and not covered by the Federal Employee's Compensation Act Regulations. Medical and dental appointments may be included under this part. However, whenever possible, medical and dental appointments should be scheduled after instructional time.

(i) Sick leave shall accrue at the rate of four hours each biweekly pay period in pay status during the term of the contract; and no precredit or advance of sick leave is authorized.

(ii) Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(3) *School vacation.* School term employees may receive up to 136 hours of school vacation time for use when school is not in session. School vacations are scheduled on the annual school calendar during the instructional year and may not be scheduled

before the first day of student instruction or after the last day of student instruction. School vacations are not a right of the employee and cannot be paid for or carried over if the employee is required to work during the school vacation time or if the program will not permit school term employees to take such vacation time.

(b) *Leave for full-time, year-long employees.* Employees who are on a full-time, year-long contract are authorized the following types of leave:

(1) *Vacation leave.* Absence approved in advance by the supervisor for rest and relaxation or other personal reasons is authorized on a per year basis of Federal Government service as follows: years 1 and 2 of employment—120 hours; years 3–5 of employment—160 hours; 6 or more years—200 hours. The supervisor will determine when vacation leave may be used. Vacation leave is to be scheduled and used to the greatest extent possible during periods when school is not in session and the students are not in the dormitories. Vacation leave is credited to an employee on the day following his or her date of employment, provided the length of the contract exceeds 24 weeks. An employee may carry into succeeding years up to 200 hours of vacation leave. Leave unused at the time of separation is forfeited.

(2) *Sick leave.* Sick leave accumulation and use is authorized on the same basis as for school term employees under § 38.12(a)(2) of this part.

(c) *Leave for part-time year-long employees.* Employees who are on part-time year-long contracts exceeding 20 hours per week are authorized the following types of leave:

(1) *Vacation leave.* Absence approved in advance by the supervisor for rest and relaxation or other personal reasons is authorized on a per year basis of Federal Government service as follows: years 1 and 2 of employment—64 hours; years 3–5 of employment—80 hours; 6 or more years—104 hours. The supervisor shall determine when vacation leave may be used. Vacation leave is to be scheduled and used to the greatest extent possible during periods when school is not in session and the students are not in the dormitories. Vacation leave is credited to an employee on the day following his or her date of employment provided the length of the contract exceeds 24 weeks and may not be accumulated in excess of 104 hours from year to year. An employee may carry over up to 104 hours from one contract year to the next. Leave unused at the time of separation is forfeited.

(2) *Sick leave.* Sick leave is accumulated on the basis of three hours each biweekly pay period in pay status; no precredit or advance of sick leave is authorized. Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(d) *Leave for school term employees on a part-time work schedule in excess of 20 hours per week.* (1) Employees on a part-time work schedule in excess of 20 hours per week may receive a maximum of 102 hours of school vacation time; 20 hours of personal/emergency leave; and 63 hours of sick leave accrued at three hours per pay period for the first 21 pay periods of their contracts. Personal/emergency leave only accrues provided the length of the contract exceeds 24 weeks.

(2) The part-time employee will request the use of this leave in writing in advance when it is for personal use or personal business (e.g., going to the bank, etc.). When this leave is requested for emergency purposes (e.g., death in immediate family), it will be requested immediately after the emergency is known, if possible, by the employee and before leave is taken or as soon as the supervisor reports to work on the official work day.

(3) Final approval rests with the supervisor. This leave shall be taken only during the school year. No compensation for or carryover of unused leave is authorized.

(4) *Sick leave.* Sick leave is an absence approved by the supervisor for incapacity from duty due to injury or illness, not related to or incurred on-the-job and not covered by the Federal Employee's Compensation Act Regulations. Medical and dental appointments may be included under this part. However, whenever possible, medical and dental appointments should be scheduled after instructional time.

(i) Sick leave shall accrue at the rate of three hours each biweekly pay period in pay status for the first 21 pay periods of their contract; no precredit or advance for sick leave is authorized.

(ii) Accumulated sick leave at the time of separation will be recredited to an educator who is reemployed within three years of separation.

(5) *School vacation time.* Part-time employees may receive up to 102 hours of school vacation time for use when school is not in session. Approval for the use of this time will be administratively determined by the school supervisor, ASE or AEPA, and this time may not be scheduled before the start of school or after the end of school.

(i) All school vacation time for part-time employees will be approved at the convenience of the program and not as a right of the employee.

(ii) Vacation time cannot be paid for or carried over for a part-time employee if the employee is required to work during the school vacation time or if the program will not permit part-time employees to take such vacation time.

(e) *Accountable absences for all contract employees.* The following are considered accountable absences:

(1) *Approved absence.* If prescheduled and approved by the school supervisor, ASE or AEPA, as appropriate, an employee may be on leave without pay.

(2) *Absence without leave.* Any absence is not prescheduled or approved in advance or excused by the supervisor is considered absence without leave.

(3) *Court and military leave.* Employees are entitled to paid absence for jury or witness service and military duty as a member of the National Guard or Reserve under the same terms or conditions as outlined in sections 6322 and 6323 of title 5 U.S.C., and corresponding provisions of the Federal Personnel Manual, when the absence occurs during the regular contract period. Employees may be requested to schedule their military leave at times other than when school is in session.

(4) *Administrative leave.* Administrative leave is an excused absence from duty administratively authorized without loss of pay or without charge to leave. This leave is not a substitute for other paid or unpaid leave categories. Administrative leave usually is authorized on an individual basis except when a school is closed or a group of employees are excused from work for a particular purpose. The school supervisor, ASE or AEPA will grant administrative leave. A school closing must be approved by the ASE or AEPA.

(f) Educators serving with contracts with work weeks of 20 hours a week or less are not eligible for any type of paid leave.

(g) For school term educators, no paid leave is earned nor may accumulated leave be used during any period of employment with the Bureau between school terms.

(h) Employees issued contracts for intermittent work are not eligible for any type of paid leave.

(i) *Leave transferred in.* Annual leave credited to an employee's accrued leave balance immediately before conversion to a contract education position or appointment under this part will be carried over and made available to the employee. Sick leave credited to an employee's accrued sick leave balance immediately before conversion to a contract education position or appointment under this part shall be credited to the employee's sick leave account under the system in § 38.12(a)(2) and (b)(2).

§ 38.13 Status quo employees in education positions.

(a) *Status quo employees.* Individuals who were Bureau employees on October 31, 1979, with an appointment in either the competitive or excepted service without time limitation, and who are serving in an education position, shall be continued in their positions under the terms and conditions of that appointment with no change in their status or positions. Such employees are entitled to receive any changes in compensation attached to the position. Although such employees occupy ''education positions'' as defined in this part, the terms and conditions of their appointment, status, and entitlements are determined by competitive service regulations and procedures. Under applicable procedures, these employees

are eligible for consideration for movement to other positions that are defined as ''contract education'' positions. Such movement shall change the terms and conditions of their appointment to the terms and conditions of employment established under this part.

(b) If the tribe or school board waives the Indian preference law, the employee loses the early-out retirement eligibility under Pub. L. 96–135, ''early-out for non-Indians,'' if they are entitled to the early-out retirement. A memorandum for the record on BIA letterhead shall be signed by the employee and placed on the permanent side of his/her Official Personnel Folder, along with the tribal resolution, if the tribe/school board has waived the Indian preference law to employ the non-Indian.''

(c) *Conversion of status quo employees to contract positions.* Status quo employees may request in writing to the school supervisor, ASE or AEPA, as applicable, that their position be converted to contract. The appropriate school board will be consulted and a determination made by such school board whether such individual should be converted to a contract employee.

(1) Written determination by the school board should be received within a reasonable period, but not to exceed 30 days from receipt of the request. Failure of the school board to act within this period shall have the effect of disapproving the proposed conversion.

(2) With school board approval, an involuntary change in position shall not affect the current status of status quo education employees.

§ 38.14 Voluntary services.

(a) *Scope.* An ASE or AEPA may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau schools from the private sector, including individuals, groups, or students. Voluntary service shall be for all non-hazardous activities where public services, special projects, or school operations are improved and enhanced. Volunteer service is limited to personal services received without compensation (salary or wages) by the Bureau from individuals, groups, and students. Nothing in this section shall be construed to require Federal employees to work without compensation or to allow the use of volunteer services to displace or replace Federal employees.

(b) *Volunteer service agreement.* An agreement is a written document, jointly completed by the volunteer, the Bureau school supervisor, and the school board, that outlines the responsibilities of each. In the case of students receiving credit for their work (i.e., student teaching) from an education institution, the agreement will be jointly completed by the student, a representative of the institution, and the Bureau school supervisor. In the case of volunteer groups, the agreement shall be signed by an official of the volunteering organization, the Bureau school supervisor, and the school board and a list of signatures and emergency telephone numbers of all participants shall be attached.

(c) *Eligibility.* Although no minimum age requirement exists for volunteers, schools shall comply with appropriate Federal and State laws and standards on using the services of minors. All volunteers under the age of 18 must obtain written permission from their parents or guardians to perform volunteer activities.

(d) *Status.* Volunteers participating under this part are not considered Federal employees for any purpose other than:

(1) Title 5 U.S.C. chapter 81, dealing with compensation for injuries sustained during the performance of work assignments.

(2) Federal tort claims provisions published in 28 U.S.C. chapter 171.

(3) Department of the Interior Regulations Governing Responsibilities and Conduct.

(e) *Travel and other expenses.* The decision to reimburse travel and other incidental expenses, as well as the amount of reimbursement, shall be made by the school supervisor, ASE, AEPA, and the respective school board. Payment is made in the same manner as for regular employees. Payment of travel and per diem expenses to a volunteer on a particular assignment must be supported by a specific travel authorization and cannot exceed the

cost of employing a temporary employee of comparable qualification at the school for which a travel authorization is considered.

(f) *Annual report.* School supervisors shall submit reports on volunteers to the ASE or AEPA by October 31 of each year for the preceding year.

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AUTHORITY: 25 U.S.C. 13; 25 U.S.C. 2008.

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Subpart A—General

§ 39.1 Purpose and scope.

The purpose of this rule is to provide for the uniform direct funding of BIA operated and tribally operated day schools, boarding schools, and dormitories. These rules apply to all schools and dormitories and administrative units which are funded through the Indian School Equalization Program of the Bureau of Indian Affairs.

§ 39.2 Definitions.

Assistance under this rule is subject to the following definitions and requirements relating to fiscal and administrative matters. Definitions of terms that are used throughout the part are included in this subpart. As used in this part, the term:

(a) *Agency* means an organizational unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes. The term includes Bureau Area Offices only with respect to off-reservation boarding schools administered directly by such Offices.

(b) *Agency school board* means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Director in consultation with the affected tribes, except that, in Agencies serving a single school, the school board of such school shall fulfill these duties.

(c) *Agency Superintendent of Education* or *Superintendent* means the Bureau official in charge of Bureau education programs and functions in an Agency who reports to the Director.

(d) *Area Director for Education* means the Bureau official in charge of Bureau Education programs and functions in a Bureau Area Office and who reports to the Director.

(e) *Assistant Secretary* means the Assistant Secretary of Indian Affairs, Department of the Interior, or his or her designee.

(f) *Average daily membership* or *ADM* means the average of the actual membership in the school, for each student classification given separate weightings in the formula. Only those eligible students shall be counted as members who are:

(1) Listed on the current roll of the school counting them during the count week;

(2) Not listed as enrolled in any other school during the same period; and

(3) In actual attendance at the school counting them at least one full day during the count week in which they are counted.

(g) *Bureau* means the Bureau of Indian Affairs of the Department of the Interior.

(h) *Decision of record* means a formal written confirmation of a voted action by a school board during a formally constituted school board meeting.

(i) *Director* means the Director of the Office of Indian Education Programs for the Bureau of Indian Affairs, or his or her designee.

(j) *Eligible student* means an Indian student properly enrolled in a Bureau school or dormitory, or a tribally operated school or dormitory funded by the Bureau, who meets the applicable entry criteria for the program(s) in which he or she is enrolled.

(k) *Entitlement* means that amount of funds generated by the Indian School Equalization Formula for the operational support of each school.

(l) *Advice of allotment* means the formula written document advising a school or an administrative office of its entitlement under the formula. The advice of allotment conveys legal authority to obligate and expend funds in a given fiscal year.

(m) *Allotment* means the amount of the obligational authority conveyed to a given school or Bureau administrative office by its advice of allotment in a given fiscal year.

(n) *Indian* means a person who is a member of an Indian tribe.

(o) *Indian Tribe* means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(p) *Program* means each or any subset of the Indian School Equalization Program (ISEP), but not the ISEP itself, for which a separately computable dollar amount may be generated by a school. Each program classification is a cost account in an accounting system. The following accounting programs are those established by this part:

(1) Instructional costs;

(2) Boarding costs;

(3) Dormitory costs;

(4) Bilingual instruction costs;

(5) Exceptional child education costs;

(6) Intense residential guidance costs;

(7) Student transportation fund costs;

(8) School maintenance and repair fund costs;

(9) School board training fund costs;

(10) Pre-kindergarten costs; and

(11) Previously private contract school operation and maintenance costs.

(q) *School* means an educational or residential center operated by or under contract with the Bureau of Indian Affairs offering services to Indian students under the authority of a local school board and the direction of a local school supervisor. A school may be located on more than one physical site. The term *school*, unless otherwise specified, is meant to encompass day schools, boarding schools, previously private schools, cooperative schools, contract schools and dormitories as those terms are commonly used.

(r) *Local School Board*, (usually referred to as *school board*) including off-reservation boarding school boards and dormitory school boards, when used with respect to a Bureau school, means a body chosen to exercise the functions of a school board with respect to a particular Bureau operated or funded school, in accordance with the laws of the tribe to be served or, in the absence of such laws, elected for similar purpose by the parents of the Indian children attending the school, except that in schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected; and the number of such members shall be determined by the Director in consultation with the affected tribes.

(s) *Supervisor* or *local school supervisor* means the individual in the position of ultimate authority at any Bureau administered or tribally operated contract school.

(t) *Tribally operated contract school* or *contract school* means a school (other than a public school) which is financially assisted under a contract with the Bureau.

(u) *Weighted student unit (WSU)* means the measure of student membership adjusted by the weights or ratios used as factors in the Indian School Equalization Formula established in § 39.10 below. The term weighted student unit also describes the measure by which supplements to the weighted

student count at any school are augmented as the result of the application of small school supplements or Alaskan school supplements.

§39.3 General provisions.

(a) All funds appropriated by the Congress for the support and administration of Bureau operated or contracted elementary and secondary educational purposes and programs shall be allocated in accordance with, and be distributed through, the Indian School Equalization Program, unless a specific amount of funds are added or reduced for a particular class of schools through the budget and appropriations process.

(b) Each expenditure of funds authorized in part 39 is without exception subject to the availability of funds.

Subpart B—The Indian School Equalization Formula

§39.10 Establishment of the formula.

There is hereby established the Indian School Equalization Formula (ISEF). Funds for the instruction and residential care of Indian children shall be earned as an entitlement by each local school according to a weighted student unit formula. The funds allocated through the formula shall be computed as follows:

(a) The basic instructional average daily membership (ADM) shall be counted at each school location as provided for in subpart C of this part. From the application of ratios or weights as provided in these rules a weighted student unit (WSU) value for each school location is derived by multiplying the student count for each program area by the weights.

(b) If the school is a boarding school or a dormitory, the residential students will produce program units which will, by the application of weights, produce additional WSU's.

(c) The ADM count of eligible small schools or dormitories may generate additional unit supplements.

(d) All Alaskan schools are eligible under the formula to generate supplemental units.

(e) The total weighted student unit count for each school location is then multiplied by a base unit value to derive the estimated dollar entitlement to each school(s).

The total amount is made available to each school(s), under the rules related to administrative provisions provided in subparts C and D of this part.

§39.11 Definitions.

Assistance to approved school(s) under this subpart is subject to the definitions established in §39.2 and to the following definitions for determining student counts in the various weighted areas. As used in the subpart, the term:

(a) *Base* or *base unit* means both the weight or ratio of 1.0 and the dollar value annually established for that weight or ratio which represents students in grades 4 through 8 in a typical instructional program.

(b) *Basic program* means the instructional program provided all students at any age level exclusive of any supplemental programs which are not provided to all students in day or boarding schools.

(c) *Grade* or *Grade Level*, followed in most cases by *K* or a number, means a classroom grouping ordinarily determined by student age and successful completion of a criterion number of years of previous schoolwork. The use of this term does not preclude ISEP funding of programs in which instruction is *non-graded* or *individualized*, or which otherwise depart from grade-level school structure. For purposes of funding under the ISEP, students in such programs shall be counted as *in the grade level* to which they would ordinarily be assigned based on their chronological age and number of years of schooling completed.

(d) *Grades 1–3* means a weighted program for a student who is present during the count week (see §39.30(b)) in grades 1 through 3 who is at least 6 years old by December 31 of the fall of the school year during which the count occurs and is a member of an educational program approved by the board which is conducted at least six gross hours daily during at least 180 days per school year. Gross hours means from the start of the school day to the end of the school day including all activities.

(e) *Grades 4–8* and *grades 9–12* means a weighted program for a student who is present during the count week (see § 39.30(b)) in either of the programs encompassing grades 4 through 12 who is a member of an educational program approved by the school(s) at least six gross hours daily during at least 180 days per school year and shall not have achieved the age of 21 nor have received a high school diploma or its equivalent.

(f) *Kindergarten* means a weighted program for a student who is present during the count week (see § 39.30(b)) who is at least 5 years old by December 31 of the fall of the school year during which the count occurs and a member of an educational program approved by the school(s) conducted at least four gross hours daily during at least 180 days per school year. Otherwise eligible students who are in a program conducted less than four hours daily, but at least two gross hours daily are eligible as *half-time kindergarten* students.

(g) *Intense Bilingual* means a weighted program for a student who is present during the count week, whose primary language is not English, and who is receiving academic instruction daily through oral and/or written forms of an Indian or Alaskan Native language, as well as specialized instruction in English for non native speakers of English, under resources of the ISEP.

(h) *Intensive residential guidance* means the weighted program for a resident student that needs special residential services due to one or more of the problems identified below, and that appropriate documentation is in that student's file as follows:

(1) Presenting problem:

(i) Court of juvenile authority request for placement resulting from a pattern of infractions of the law.

(ii) Explusion from previous school under due process.

(iii) Referral by a licensed psychologist, psychiatrist or certified psychiatric social worker as an emotionally disturbed student.

(iv) History of truancy more than 50 days in the last school year or a pattern of extreme disruptive behavior.

(2) Documentation required:

(i) Written request signed by officer of court or juvenile authority;

(ii) Certification by expelling school;

(iii) Psychologist, certified psychiatric social worker, or psychiatrist report; or

(iv) Attendance and behavior data from records of prior school, court records, or from social agency records and a written documentation summarizing such data. For all students placed in intensive residential guidance programs, there shall be further documentation of a diagnostic workup, a placement decision by a minimum of three staff members, and a record of an individualized treatment plan for each student that specifies service objectives.

(v) No student shall be classified under *Intense residential guidance* who is eligible for services at a full-time or part-time service level because of a handicapping condition as defined under Exceptional Child programs in paragraph (i) of this section.

(i) *Exceptional Child Program* means weighted programs for students who are receiving special education and related services, consistent with the identification, evaluation and provisions of a free appropriate public education required by part B of the Education of the Handicapped Act (20 U.S.C. 1401 *et seq.*; 45 CFR part 121a[1]) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794; 45 CFR part 84) and who have the following diagnosed impairments:

(1) *Deaf* means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) *Hard of hearing* means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of *deaf* in this section.

(3) *Mentally retarded* means significantly subaverage general intellectual functioning existing concurrently with

[1] 45 CFR 121a was redesignated as 34 CFR 300 at 45 FR 77368, Nov. 21, 1980.

deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(4) *Severely multi-handicapped* means concomitant impairments (such as mentally retarded-blind; mentally retarded-deaf) the combination of which causes such severe educational problems that they cannot be accommodated in regular educational programs or in special education programs solely for one of the impairments. The term includes deaf-blind children.

(5) *Orthopedically impaired* means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(6) *Other health impaired* means limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, hemophelia, epilepsy, lead poisoning, leukemia, or diabetes or the existence of a physical or mental impairment which substantially limits one or more major life activities, but which is not covered in paragraphs (i) (1) through (12) of this section.

(7) *Emotionally disturbed* means a condition exhibiting one or more of the following characteristics over a long period of time and to a significant degree, which adversely affects educational performance and requires small group instruction, supervision, and group counseling:

(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers:

(iii) Inappropriate types of behavior or feelings under normal circumstances;

(iv) A general pervasive mood of unhappiness or depression; or

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(8) *Specific learning disability* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an inability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of vision, hearing, or motor handicaps, or mental retardation, or of environmental, cultural, or economic disadvantage.

(9) *Speech impaired* means a communication disorder, such as stuttering, impaired articulation, or a voice impairment, which adversely affects a child's educational performance.

(10) *Visually handicapped* means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes partially seeing, but not fully blind, children.

(11) *Severely emotionally disturbed* means a condition such as schizophrenia, autism or the presence of the following characteristics over a prolonged period of time and to a marked degree, which seriously affects educational performance and requires intensive individual therapy (which may be conducted either in or out of the school setting), individual instruction, and supervision:

(i) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers:

(iii) Inappropriate types of behavior or feelings under normal circumstances;

(iv) A general pervasive mood of unhappiness or depression; or

(v) A tendency to develop physical symptoms or fears associated with personal or school problems.

(12) *Severely and profoundly retarded* means a degree of mental retardation

(as defined in paragraph (i)(3) of this section) which severely restricts and delays major aspects of intellectual functioning so as to require intensive small group instruction and supervision.

(13) *Students requiring home/hospital based instruction* means students provided a program of instruction in a home or hospital setting because in the judgement of a physician a student cannot receive instruction in a regular public school facility without endangering the health or safety of the student or of other students.

(14) *Multihandicapped* means concomitant impairments (such as mentally retarded with a minor additional handicap such as speech impaired) the combination of which causes educational problems that can not be accommodated in regular education programs or in part-time special education programs.

(15) *Blind* means the possession of a central vision acuity of 20/200 or less in the better eye with correcting glasses or a peripheral field of vision so contracted that its widest diameter is less than 20%.

(16) *Full-time—High Service Level* means a program of special education and related services provided to an exceptional student which consists of fifteen or more hours per week (or 60% or more of the total instructional time) of instruction and/or required related services (as described in the students individualized education program), provided outside of the regular classroom. In geographically isolated, smaller schools where facilities are limited, a full time program may consist of fifteen or more hours per week (or 60% or more of the total instructional time) of specialized individual or small group instruction or required related services regardless of where the services are actually provided (including the regular classroom).

(17) *Part-time—Moderate Service Level* means any program of regular education modified to provide specialized instruction and/or required related services (as described in the student's individualized education program) which does not provide at least the number of hours in the definition of *Full-time—High Service Level Exceptional Child Program* set forth in paragraph (i)(14) of this section.

(18) Classification of a student in full or part-time service levels in residential care programs shall be based upon prior classification of the student in an instructional program serving his/her handicapping condition.

(j) *Resident* means a student officially enrolled in the residential care program of a Bureau operated or funded school and actually receiving supplemental services provided to all students who are provided room and board in a boarding school or a dormitory during those weeks when student membership counts are conducted. Such students must be members of the instructional program in the same boarding school in which they are counted as residents. To be counted as dormitory residents, students must be enrolled in and be current members of a public school in the community in which they reside.

§ 39.12 Entitlement for instructional purposes.

BIA educational funds for the instruction of elementary and secondary Indian children shall be computed according to the following weighted student unit factors:

Basic programs	Base weights
Kindergarten	1.00
Grades 1 to 3	1.20
Grades 4 to 8	1.00
Grades 9 to 12	1.30

Supplemental program	Add-on weight
Intense bilingual	.20
EXCEPTIONAL CHILD PROGRAMS	
Full time—high service level:	
Deaf	3.00
Blind	3.00
Severely multihandicapped	3.00
Severely and profoundly retarded	3.00
Students requiring hospital/home-bound instruction	3.00
Severely emotionally disturbed	3.00
Severely emotionally disturbed (non-severe)	1.00
Specific learning disabled	1.00
Mentally retarded	1.00
Part time—moderate service level:	
Emotionally disturbed	.50
Specific learning disabled	.50
Mentally retarded	.50

Supplemental program	Add-on weight
Multihandicapped	.50
Hard of hearing	.25
Visually handicapped	.25
Orthopedically impaired	.25
Other health impaired	.25
Speech impaired	.25

§39.13 Entitlement for residential purposes.

Basic funds for student residential purposes shall be computed according to the following weighted student unit factors:

Base programs	Add-on weight
Kindergarten (For FY 80 only, 0 factor thereafter)	1.40
Grades 1 to 3	1.40
Grades 4 to 8	1.25
Grades 9 to 12	1.25
EXCEPTIONAL CHILD PROGRAMS	
All full-time handicapped students	.50
Part time:	
Orthopedically impaired	.25
Other health impaired	.25
Emotionally disturbed	.25
Mentally retarded	.25
Multihandicapped	.25
Intense Residential Guidance	.50

§39.14 Entitlement for small schools.

To compensate for the additional costs of operating small schools, qualified schools shall receive the following adjustments:

(a) Instructional programs in day and boarding schools. For each separate small school having an instructional average daily membership count (called x) of less than 100 students, the formula [(100–x) divided by 200] times x shall be used to generate add-on weighted pupil units for each such school.

(b) *Boarding school residential programs.* For each separate small boarding school having a resident average daily membership count (called y) of less than 100 students, the formula [(100 − y) divided by 200] times y shall be used to generate add-on weighted pupil units for each such boarding school.

(c) *Dormitory residential programs serving public schools.* For each small dormitory program having an average daily membership count (called z) of less than 100 students, the formula [(100 − z) divided by 200] times z shall be used to generate add-on weighted pupil units for each dormitory.

§39.15 Alaskan school cost supplements.

To meet the statutory requirements for a salary supplement for Alaskan educational staff, and add-on weight of .25 will be used as a factor by which all pupil program-generated weighted students shall be supplemented. Such generated Alaskan cost supplements will be added to the weighted pupil units generated by each school in the same manner as small school units.

§39.16 Computation of school entitlements.

The sum of all weighted student units, including any small school and any Alaskan school cost supplements shall be computed for each school under the management of the Director. The total number of units generated by each approved school shall be multiplied by a base dollar value which is equivalent to a base weight of 1.0 in the formula. This base value shall be computed annually by the Director by dividing the total of all weighted students (WSU) generated by all approved schools into the total amount appropriated for distribution through the Indian School Equalization Formula.

§39.17 Comparability with public schools.

(a) In no case shall a Bureau or contract school attended by an Indian student receive less under these regulations than the average payment from the Federal funds received per Indian student, under other provisions of law, by the public school district in which the student resides. Any school which is funded at a lower level per student under the ISEP than either the average daily expenditure per student for instructional costs in the public schools in the State in which it is located, or the amount per Indian student which the local public school district in which it is located receives from all Federal funding sources, shall present

documentation of this fact to the Director of the Office of Indian Education Programs.

(b) Upon verification that comparisons in the documentation received cover comparative expenditures, and that the inequity indeed exists, the Director shall adjust the school's allocation to equal the payment per-Indian student of the public school district or State involved.

(c) Funds for such adjustment shall be taken from the Formula Implementation Set Aside established under § 39.78 of these regulations.

§ 39.18 Recomputations of current year entitlements.

The Director shall continuously monitor the processes by which the final allocation of each school's entitlement is made. When changes occur either in the total amount of funds available for the operations of schools or in the total number of weighted student units for all schools due to a change in the number of weighted student units reported or altered by auditing, the Director shall consider whether adjustments are necessary in order that the full available appropriations are fairly allocated to the schools, and that all funds are fully allotted to schools.

§ 39.19 Phase-in provisions.

(a) *Limits on excess gains.* No school shall receive a percentage increase in its total fund entitlement, over the comparable budget amount per school in the FY 79 Bureau Education budget, which is greater than the following percentage ratios:

(1) In FY 80—20%

(2) In FY 81—70%

(b) *Limits on excess losses.* No school shall receive a percentage decrease in its total fund entitlement, below the comparable budget amount in the FY 79 Bureau Education budget, which is greater than the following percentage ratios:

(1) In FY 80—10%

(2) In FY 81—30%

(c) *Effects of limits on losses and gains.* Local school gains in excess of the above percentage limits for each of the limited years shall be returned to the common base for all schools and distributed through the formula. Funds to limit losses in excess of the above limits shall be withdrawn from the common base for all schools and distributed to the schools subject to such excess losses.

(d) *Transfer of fiscal accountability.* To allow time for developing fiscal accountability, knowledge, skill and responsibility at the local school level and in order to support accountability by responsible Fiscal Agents under section 3679 of the Revised Statutes (the Anti-Deficiency Act), a period of one year (FY 1980) shall be used during which the legal allottee for each Bureau-operated school shall be the Education Superintendent of the Agency within which the school is located. In the case of off-reservation boarding schools and other Bureau-operated schools not served by an Agency Education Office, the Area Education Director shall be the legal allottee. Further allocation of funds under this rule shall be fully in accordance with the Indian School Equalization Program and Formula, and expenditures shall be made in accordance with the financial planning provisions of section E of this rule.

(e) Beginning in FY 1981, the allottee shall be as otherwise determined in this rule.

§ 39.20 Development of uniform, objective and auditable student weighted area placement criteria and guidelines.

The Director shall develop:

(a) Uniform, objective and auditable placement criteria and guidelines for placement of students in dormitories and residential care programs of boarding schools and in special weighted program areas which expand upon the definitions in this part; and

(b) A uniform and auditable system of enrollment criteria and attendance boundaries for each school in the Bureau educational program.

The Director shall publish these criteria and guidelines in the Bureau Manual (BIAM) and widely disseminate them to each school prior to September 1, 1980, so that appropriate student placements can occur before the FY 1981 October student count.

§39.21 Future considerations for weighted programs.

(a) Within twelve months of the final publication of this rule, the Director shall review the following factors in depth, and determine whether to incorporate each into the weighted pupil formula:

(1) A rural isolation adjustment.

(2) A staff cost adjustment.

(3) A gifted and talented student program.

(4) A vocational education program.

(5) A facilities operation and maintenance program.

(6) Additional institutional size factors.

(b) The Director may also recommend incorporation of other factors, based upon the Bureau's experience in the first year's operation of the ISEP, and upon the Standards to be developed under section 1121 of the Act.

(c) The Director shall also review the adequacy of the weighted factors, procedures, criteria and definitions now in this rule, throughout part 39. On the basis of this review, the Director shall present a comprehensive report of findings, with recommendations for amendment of this rule, to the Secretary, who shall incorporate them in a Notice of Proposed Rulemaking to include a minimum of sixty (60) days for public comment.

§39.22 Authorization of new program development, and termination of programs.

(a) Within one year of the final publication of this rule, the Secretary shall develop uniform procedures and criteria for the authorization of new schools where no Bureau funded or operated school program has previously existed, and for authorization of expansions of existing Bureau funded or operated school programs to serve additional age groups not previously served. These procedures and criteria shall be published as amendments to this rule under a new Notice of Proposed Rulemaking, which shall contain provisions for a minimum of sixty (60) days of public review and comment prior to final publication.

(b) Procedures and criteria developed under this section shall be integrated with existing procedures under 25 CFR part 271 for determining contractable functions of the Bureau, in order to produce a coherent system for authorization of Tribally initiated program development under contracting procedures of Pub. L. 93–638, which is compatible with Bureau initiated program development.

(c) Procedures and criteria developed under this rule shall also contain provisions for making decisions regarding closing schools and terminating Bureau programs of education. These shall provide for full consultation with the Indian persons and Tribes served by the programs and schools involved in any such decisions.

§39.23 Review of contract schools supplemental funds.

Before the end of formula phase-in, the Director shall consider the impact on equalization of supplemental funds appropriated for aid to schools under the Johnson O'Malley Act and under title IV of the Indian Education Act, which are available to contract schools but not to Bureau schools, and determine appropriate adjustments, if any. Any adjustments in the ISEP which results from this review shall be effected by formal revision of this rule, under a Notice of Intended Rulemaking published in the FEDERAL REGISTER, and shall be subject to public comment for a minimum of sixty (60) days prior to final rulemaking.

Subpart C—Formula Funding Administrative Procedures

§39.30 Definitions.

As used in this subpart, the term:

(a) *Certifying the validity of student counts* means that counts of student ADM have been accurately recorded in compliance with specifications of these rules, and that the Agency Superintendent of Schools, the local school supervisor, and local school board chairperson, where a school board exists, testify to and confirm the correctness of this count.

(b) *Count week* means the last full week in September for the purposes of calculating allotments.

(c) *Student classification* means any special student need area that receives

a separate weighting through the Indian School Equalization Formula.

[44 FR 61864, Oct. 26, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 49 FR 36368, Sept. 17, 1984]

§ 39.31 Conditions of eligibility for funding.

(a) To be eligible for direct formula funding as established in subpart B of this part, a day school, boarding school, or dormitory must meet minimum standards, or, failing to do so, must include in its financial plan steps acceptable to the Director for taking corrective action to meet the standards to be prescribed pursuant to section 1121 of the Education Amendments of 1978 (Pub. L. 95–561; 25 U.S.C. 2001). Until such standards are prescribed, the Director shall determine eligibility for funding in accordance with established procedures for authorizing Bureau operated schools.

(b) To be eligible for direct formula funding, a tribally operated day or boarding school or dormitory must meet the requirements of part 271 of this chapter (25 CFR part 271) for receipt of Bureau Education funds under contracts for school operation.

§ 39.32 Annual computation of average daily membership.

(a) Average daily membership (ADM) as defined in § 39.2(f) shall be determined during the last full school week in September during which all students eligible under the definition shall be counted by student program classification.

(b) The Director shall direct the receipt and management of information necessary to obtain timely ADM reports from schools. Agency education offices and, in the case of off-reservation boarding schools, Area education offices together with each school's supervisor and school board chairperson where a board exists shall be responsible for certifying the validity of each school's student counts. The September ADM will be used to determine final allotments for the school year.

[49 FR 36368, Sept. 17, 1984]

§ 39.33 Special education unduplicated count provision.

In counting special education ADM with the exception of speech therapy, no child shall be counted or funded twice for participation in more than one special education program.

§ 39.34 Substitution of a count week.

A school may petition the Director to substitute another week in the same month for the specified count week if it can be established that to use the specified count week would result in grossly inaccurate student counts. Where tribal ceremonial days are known in advance, such a petition shall be submitted in advance of the determined count week.

§ 39.35 Computation of average daily membership (ADM) for tentative allotments.

Tentative allotments for each future year's funding shall be based on the ADM for the September count week of the current year.

[49 FR 36368, Sept. 17, 1984]

§ 39.36 Declining enrollment provision.

If the decline of a school's average daily membership exceeds ten percent in any given school year, the school may elect to request funding based on the average of the current and previous years' September ADM count.

[49 FR 36368, Sept. 17, 1984]

§ 39.37 Auditing of student counts.

The Secretary shall provide for auditors as required to assure timeliness and validity in reporting student counts for formula funding.

§ 39.38 Failure to provide timely and accurate student counts.

(a) Responsible Bureau school, Agency, Area, and Central Office administrators may be dismissed for cause, or otherwise penalized, for submission of invalid or fraudulent annual student ADM counts or willfully inaccurate counts of student participation in weighed program areas. A person who knowingly submits or causes to be submitted to a Federal official or employee false information upon which the expenditure of Federal funds is

based, may be subject to criminal prosecution under provisions such as sections 286, 287, 371, or 1001 of title 18, U.S. Code.

(b) Failure of responsible Federal officials to perform administrative operations which are essential to the ISEP, on a timely basis, shall result in swift disciplinary action by Bureau supervisory personnel, under existing procedures. Failure or refusal of Bureau supervisory personnel to take disciplinary action shall result in disciplinary action against them by higher level supervisors.

§39.39 Delays in submission of ADM counts.

(a) If a Bureau operated or funded school delays submission of an ADM count, by more than (2) weeks beyond the final count week in November, for that school, the Director shall set aside an amount equal to the tentative allotment for that school out of the funds available for allotment, and shall proceed to compute the initial allotments for all other schools in the Bureau school system, based upon remaining funds available for allotment. The allotment for the school which has failed to submit a timely ADM count shall be computed when the ADM count is received, but shall not exceed the amount set aside therefore. Any amount remaining in the set-aside fund, after computation of the allotment, shall be transferred into the Formula Implementation Set-Aside Fund, and distributed in accordance with provisions of §39.78 in subpart F.

(b) In no case shall the Director delay the computation of initial allotments for schools which have submitted timely ADM counts while waiting for those schools which have failed to submit.

Subpart D—Direct Allotment of Formula Entitlements

§39.50 Definitions.

As used in this subpart, the term:

(a) *Apportionment* means that part of a school's allotment received each quarter as an authorization to obligate funds.

(b) *Approved apportionment schedules* means that approval given for the quarterly obligation of funds for a given appropriation of funds for the Bureau.

(c) *Authorization to obligate* means that approval given to a school to incur obligations of funds against a given appropriation.

(d) *Final allotment* means that notice of funds available to schools, based on the September student count as computed through the Indian School Equalization Formula (ISEF) based on full distribution of Indian School Equalization Program (ISEP) funds available for the fiscal year.

(e) *Initial allotment* means that notice of funds available to schools based on the September student count as computed through the Indian School Equalization Formula prior to any adjustments due to fluctuating student counts.

(f) *Responsible fiscal agent* means the local school supervisor of a Bureau operated school except where such authority is designated to the Agency Superintendent of Education by a school board decision of record or by a written agreement signed by both parties. For contract schools, the responsible fiscal agent shall be designated in an action of record by the contractor.

(g) *Tentative allotment* means that notice of funds available to schools based on the September student count as computed through the Indian School Equalization Formula based on a proposed appropriation in the President's budget for the next fiscal year.

[44 FR 61864, Oct. 26, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 49 FR 36368, Sept. 17, 1984]

§39.51 Notice of allotments.

The Director shall notify school administrators and boards of allotments of funds based on the September ADM count established under subpart B of this part according to the following schedule:

(a) Tentative allotments shall be made by March 15 of the prior fiscal year;

(b) Initial allotments shall be made not later than November 15 of the fiscal year; and

(c) Final allotments shall be made not later than January 15 of the fiscal year.

[49 FR 36368, Sept. 17, 1984]

§ 39.52 Initial allotments.

The Assistant Secretary—Indian Affairs, as requested by the Director, shall make initial allotments to Bureau operated schools, Agency Education Offices, and Central and Area Offices. The Assistant Secretary—Indian Affairs shall make initial allotments for tribally operated schools to appropriate Agency Superintendents of Education, or as otherwise provided by the Director.

§ 39.53 Obligation of funds.

(a) Authority to obligate funds in the Bureau operated schools shall be governed by provisions of the Bureau Manual (42 BIAM).

(b) Authority to obligate funds in tribally operated contract schools shall be governed by contracting procedures of 25 CFR part 271.

(c) Authority to obligate funds in all Bureau funded and operated schools shall be based upon the tentative allotment (§ 39.51) for the period beginning October 1 of any fiscal year. The tentative allotment as restricted by a continuing resolution, if applicable, would govern until computation and notification of initial allotments as described in this sub-part, as adjusted by the Director in accordance with §§ 39.75, 39.78, 39.90, 39.102 and 39.111.

§ 39.54 Apportionment of entitlements to schools.

(a) *Bureau operated schools.* The Director shall make quarterly apportionments directly to the local school supervisor or to the school's responsible fiscal agent as specifically delegated in accordance with § 39.55 of this part. Such quarterly apportionments will be made as determined in § 39.53 of this part.

(b) *Contract schools.* The Agency Superintendent of Education, or another agent as designated by the Director, shall be responsible through the contracting officer in accordance with 25 CFR part 271 for effecting and adjusting contracts with tribally operated schools.

§ 39.55 Responsible local fiscal agent.

The responsible fiscal agent shall:

(a) Expend funds solely in accordance with the local educational financial plan, as ratified or amended by the local school board, unless in the case of Bureau operated schools, this plan has been overturned under the appeal process prescribed in these rules, in which case expenditures shall be made in accordance with the local educational financial plan as determined by the Agency Superintendent of Education.

(b) Sign all documents required for the obligation and or payment of funds and documentation of receipt of goods and services.

(c) Report at least quarterly to the local school board on the amounts expended, amounts obligated and amounts currently remaining in funds budgeted for each program of services in the local financial plan.

(d) Recommend changes in budget amounts, as required for effective management of resources to carry out the local financial plan, and incorporate such changes in the budget as are ratified by the local school board, subject to provisions for appeal and overturn.

§ 39.56 Financial records.

Each responsible fiscal agent receiving funds under the ISEP shall maintain expenditure records in accordance with financial planning system procedures as required herein.

§ 39.57 Access to and retention of local educational financial records.

The Comptroller General, the Assistant Secretary, the Director, or any of their duly authorized representatives shall have access for audit and examination purposes to any of the local schools' accounts, documents, papers and records which are related or pertinent to the school's operation. The provisions of 25 CFR 271.47 will be applicable in the case of tribally contracted schools.

§ 39.58 Expenditure limitations for Bureau operated schools.

(a) Expenditure of allotments shall be made in accordance with applicable federal regulations and local education financial plans, as defined in § 39.60(b) of subpart E.

(b) Where there is disagreement between the Area or Agency support service staff and the responsible fiscal agent regarding the propriety of the obligation or disbursement of funds, appeal shall be made to the Director.

Subpart E—Local Educational Financial Plan

§39.60 Definitions.

As used in this subpart, the term:

(a) *Consultation* means soliciting and recording the opinions of school boards regarding each element in the local financial plan, as set forth below, and incorporating those opinions to the greatest degree feasible in the development of the local educational financial plan at each stage thereof.

(b) *Local educational financial plan* means that plan which programs dollars for educational services for a particular Bureau operated or funded school which has been ratified in an action of record by the local school board, or determined by the superintendent under the appeal process set forth in this subpart.

(c) *Budget* means that element in the local educational financial plan which shows all costs of the plan by discrete programs and sub-cost categories thereunder.

§39.61 Development of local educational financial plans.

A local educational financial plan shall be developed by the local school supervisor, in active consultation with the local school board, based on the tentative allotment received as provided in §39.51.

§39.62 Minimum requirements.

The local financial plan shall include, at a minimum, each of the following elements:

(a) Separate programing of funds for each group of Indian students for whom a discrete program of services is to be provided. This must include at a minimum each program for which funds are allotted to the school through the Indian School Equalization Program;

(b) A brief description, or outline, of the program of student services to be provided for each group identified;

(c) A budget showing the costs projected for each program, as determined by the Director through the development of a uniform cost accounting system related to the Indian School Equalization Program;

(d) A statement of the percentage relationship between the total of the anticipated costs for each program and the amount the students served by that program will generate under the Indian School Equalization Formula. Beginning in FY 1981, there shall also be included a statement of the cost incurred for each program in the preceding fiscal year and the amount received for each such program as the result of the Indian School Equalization Formula. For exceptional child programs the plan must provide that at least 80% of the funds generated by students served by the program be spent on those students;

(e) A provision for certification by the chairman of the school board that the plan as shown, or as amended, has been ratified in an action of record by the school board; or

(f) Except in the case of contract schools, a provision for certification by the Agency Superintendent of Education that he or she has approved the plan as shown, or as amended, in an action overturning the rejection or amendment of the plan by the school board.

§39.63 Procedures for development of the plan.

(a)(1) Within thirty (30) days after receipt of the tentative allotment for the coming school year, the school supervisor shall meet and consult with the local school board on the local financial plan.

(2) The school supervisor shall discuss at this meeting the present program of the school and any proposed changes he or she wishes to recommend. The school board members shall be given every opportunity to express their own ideas as well as their views on the supervisor's recommendations. Subsequently the school supervisor shall present a draft plan to the school board with recommendations concerning each of the elements outlined in this subpart.

(b) Within sixty (60) days of receipt of the tentative allotment, the school board shall review the local financial plan as prepared by the school supervisor and, by a quorum vote, shall have the authority to ratify, reject or amend such financial plan.

(c) The school board shall have the authority, at any time following the ratification of the financial plan on its own determination or in response to the supervisor, to revise such plan to meet needs not foreseen at the time of preparation of the plan.

(d) If the supervisor does not wish to file an appeal, he or she shall transmit a copy of the approved local financial plan within two weeks of the school board action, along with the official documentation of the school board action, to the office of the Agency Superintendent of Education. Later revisions to the financial plan must be transmitted in the same manner.

(e) In the event that the school board does not act within the prescribed deadline, the financial plan shall be referred to the Agency Superintendent of Education for ratification, subject to subsequent amendment by the school board in accordance with paragraph (c) of this section.

(f) The Agency Superintendent of Education will review the local financial plan for compliance with prescribed laws and regulations or may refer the plan to the Solicitor's Office for legal review. If the Superintendent notes any problem with the plan, he or she shall notify the local board and local supervisor of the problem within two weeks of receipt of the local financial plan and shall make arrangements to assist the local school supervisor and board to correct the problem. If the Superintendent is not able to correct the problem, it shall be referred to the Director of the Office of Indian Education.

§ 39.64 Procedures for financial plan appeals.

(a) If the supervisor of a school finds an action of the local school board, in rejecting or amending the local financial plan, to be unacceptable in his or her judgment as a professional educator, the supervisor may appeal to the Agency Superintendent of Education under the following procedures and conditions:

(1) The appeal must be presented in writing, within ten (10) consecutive days of the supervisor's receipt of the school board decision which is appealed.

(2) The written appeal shall contain, at a minimum, the following information and documentation:

(i) All descriptive information concerning the element(s) in the local financial plan being appealed, substantially as presented to the school board prior to its decision.

(ii) Official documentation of the school board's decision amending or rejecting the element(s) being appealed.

(iii) A statement of the school supervisor's reasons for appealing the board's actions.

(iv) Signed certification by the supervisor that his/her reason for appeal has been presented to the chairperson of the school board, and that the school board has been offered full opportunity to submit a counter statement to the Superintendent.

(3) If the supervisor of the school is also the Superintendent, the appeal shall be made following the above procedures to the Director, who shall follow procedures set forth below, as acting Superintendent for the appeal.

(b) Within ten (10) consecutive days of receiving the appeal, the Agency Superintendent of Education shall review the appeal documents to determine if they are complete according to the criteria established in this subpart, and if so shall notify both the school supervisor and the school board of a date for an informal conference.

(c) Within twenty-five (25) consecutive days of receiving the referral for approval, the Superintendent shall:

(1) Hear any arguments on either or both sides of the appeal issue(s) at the option of either the supervisor of the school board involved.

(2) Following the informal conference, either sustain or reject the appeal for good cause, which the Superintendent shall set out in writing to both the supervisor and school board.

(d) Nothing in this subsection shall be construed as enabling the supervisor of a tribally operated school to appeal decisions of a contract school board to

the Agency Superintendent for Education, nor as empowering the Agency Superintendent for Education to overturn any action of a contract school board under this appeal process as established in Pub. L. 93–638.

(e) Within 180 days after the effective date of this subpart, the Assistant Secretary shall develop and publish in the FEDERAL REGISTER procedures for a formal hearing process which shall be available to school boards who believe their decisions regarding the financial plan have been overturned for other than good cause.

Subpart F—Contingency Funds

§39.70 Definitions.

As used in this subpart, the term:

(a) *Cumulative total* means the sum of all funds carried over from the previous fiscal year(s) as unobligated and the amount for the current year.

(b) *Temporary replacement* means the substitution of a structure on a temporary basis in lieu of the original permanent structure that has been lost to use. The temporary use will expire at the time that arrangements are completed for the availability of a structure similar to the original.

§39.71 Establishment of the School Disaster Contingency Fund.

The Bureau's annual budget justifications shall identify an amount for a separate budget account entitled the School Disaster Contingency Fund (SDCF). All schools and dormitories receiving support under the provisions of subparts B and C of this part are eligible for disaster aid from this contingency fund.

§39.72 Continuing and cumulative provisions.

Unobligated funds from the School Disaster Contingency Fund shall be continued over at the end of a fiscal year in the same account for the next year, except when otherwise provided in appropriations acts. New funds shall be added when appropriated but the Fund should not exceed a $1.5 million cumulative total unless otherwise determined by the Assistant Secretary.

§39.73 Purposes.

Disbursements from the School Disaster Contingency Fund shall be for the following purposes:

(a) Costs of replacement of items in the following categories including shipment and installation, in the event of their destruction by earthquake, fire, flood, storm, or other ''acts of God,'' and acts of massive and catastrophic vandalism where such costs are not already covered in an insurance policy in force at the time of destruction and where such destruction could not have been prevented by prudent action by the officials responsible for the care of such items:

(1) Educational materials and supplies.

(2) Equipment and furnishings.

(3) Dormitory materials and supplies, for student use, and dormitory equipment and furnishings, including those necessary for staff living space, if integral to the dormitory operation.

(4) Food services supplies, furnishings and equipment not a fixed part of structures.

(5) Office supplies and equipment for minimum essential administrative operations.

(6) Janitorial supplies and cleaning equipment.

(7) Student clothing and personal supplies if destroyed along with a school facility.

(8) Fuel supplies, tanks, lines, connections, meters, etc.

(9) Transportation equipment not otherwise provided for through the General Services Administration.

(10) Costs of repair of utility systems or components thereof, as necessary to restore utility services.

(b) Costs of temporary replacement of school facilities in the event of their destruction by earthquake, fire, flood, storm or other ''acts of God,'' until they can be reconstructed. These costs may include purchase of or movement of portable structures, including costs of delivery, installation, and connection to utility systems. They may also include costs of any fixed equipment which is integral to such structures. Structure types for which such temporary replacement costs may be paid or reimbursed are as follows:

(1) Employee quarters, if required for employee housing due to the isolation of the duty station, and on other housing is available within a reasonable commuting distance. Reasonable commuting distance will be determined under existing policies or by the Director.

(2) Dormitories, including employee apartment space if integral to the operation of the dormitory.

(3) Offices required for minimum essential administrative operations at the local school level.

(4) Academic facilities, including classrooms, kindergartens, libraries and special instructional spaces such as vocational shops and home economics rooms.

(5) Kitchens and dining facilities, including laundry and multipurpose spaces.

(6) Infirmaries, clinics and health service spaces, in school locations in which such services are not otherwise available.

(7) Separate restroom facilities, if none are otherwise available for operation of instructional and dormitory programs.

§ 39.74 Application procedures.

Application for disbursement from the School Disaster Contingency Fund shall be made to the Director of the Office of Indian Education Programs, through the Agency Superintendent of Education for the school affected. Applications shall be subject to review and comment by the Superintendent, and the Area Director for Education of the Area in which the school is located, but shall not require the approval of these officers. Such review and comment activities shall be carried out concurrently with the Director's processing of the application so that there are no delays in the transmission of the application to the Director. The Director shall develop such application forms and requests for information and documentation as are necessary to prove both loss and the fact that replacement costs are outside the normal budgetary capacity of the school operation at either the local school, Agency or Area levels.

§ 39.75 Disbursement procedures.

Disbursements from the SDCF shall be made only on the direct authorization of the Director, on the merits of each such application received, on a first come, first served basis and in amounts determined at the Director's discretion in accordance with the purposes and expenditure prohibitions set forth in this section.

§ 39.76 Prohibitions of expenditures.

(a) The following costs shall not be reimbursed or paid under the SDCF:

(1) Capital expenditures for construction of permanent facilities.

(2) Capital expenditures for reconstruction or refurbishment of facilities no longer in use except where such expenditure is the most cost effective way of temporarily replacing other destroyed facilities.

(3) Temporary replacement of facilities or replacement of equipment which has simply become outmoded and obsolete, or which has been ''condemned'' or declared unserviceable by administrative procedures, which is either still in existence or has been razed or destroyed as the result of an administrative decision.

(4) Costs of continued normal program operations which are not increased by a disaster.

(5) Personnel costs, except for temporary personnel hired to meet an emergency situation.

(6) Start-up costs for new or expanding school programs.

(7) Costs of repairs necessitated by neglect, or failure to provide routine scheduled maintenance and minor repair.

(8) Replacement costs of personal property of school employees, regardless of value or circumstances of destruction.

(9) General budgetary shortfalls due to improper fiscal management.

(10) Budgetary shortfalls from a past fiscal period, after funds have been carried forward in the SDCF to a new fiscal period.

(11) Costs of replacement of items stolen or destroyed by deliberate vandalism, neglect, or abandonment.

(12) Costs of items, services or activities for which budgetary provisions are made in other budget categories of the

Bureau not subject to distribution under the Indian School Equalization Program.

(b) Temporary replacement costs for the following structure types shall not be paid or reimbursed from the SDCF:

(1) Recreational structures, such as auditoriums, field houses, clubs, canteens, chapels, student centers, grandstands, gymnasiums, etc.

(2) Auxiliary buildings not used in student instructional or dormitory programs, such as warehouses, storage sheds, garages, firehouses, maintenance shops, law enforcement centers, instructional materials and audio-visual centers, and employees' clubs.

(3) Temporary replacement costs shall be paid or reimbursed only to the extent necessary to permit expeditious continued operation of the school dormitory care programs affected by the destruction of facilities.

§39.77 Transfer of funds from Facilities Engineering for other contingencies.

In order to reimburse schools for the costs of unforeseen and extraordinary procurement costs and for major repairs of reconstruction resulting from the disaster, the Director may request a transfer of funds from funds appropriated for Bureau Facilities Engineering to the School Disaster Contingency Fund for such purposes. When a separate formula is established by regulation for school maintenance and operations, an appropriate separate contingency fund shall be established to cover such costs.

§39.78 Establishment of a formula implementation set-aside fund.

There shall be set aside an amount not to exceed $2 million dollars to be used during fiscal year 1980 by the Director to facilitate the implementation of formula funding under this part. The fund is to provide the means of adjusting particular local school entitlements which are allocated in error due to underprojections, data error, misclassification of students, and similar reporting errors, or to provide for the initial funding of new schools under the formula, which have been started after the spring ADM counts, without reducing allotments made for other schools. Balances in this set-aside fund shall be apportioned through the formula during the first week in April by the Director or at such earlier time as he or she deems that significant ADM reporting fluctuations have ceased.

§39.79 Prohibition.

The formula implementation set-aside fund shall not be used as a discretionary fund by the Director for any purpose, and it shall be allocated solely through the Indian School Equalization Formula.

Subpart G—School Board Training

§39.90 Establishment of a school board training fund.

An amount shall be set aside annually for the purpose of providing training for school board members as authorized by Pub. L. 95–561, section 1129(d). Each school board shall receive a flat sum, initially for FY 1980 to be set at $5,000, with Alaska and off-reservation boarding schools to receive an additional 25 percent of this flat sum amount per annum.

§39.91 Other technical assistance and training.

The provision of funds under §39.90 of this subpart does not relieve the Director of the responsibility for assuring that adequate technical assistance and training services are provided to school boards to the greatest extent possible. The provision of assistance under this subpart does not preclude a school board or its trial governing body from receiving financial or other assistance from the Bureau under the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; Pub. L. 93–638; 25 U.S.C. 450 *et seq.*).

§39.92 Training activities.

Training funds provided under this part may be used for training in the following subject areas:

(a) Educational philosophy;

(b) Community school programs;

(c) Legal aspects of being a school board member;

(d) School board operations and procedures;

(e) Fiscal management;

(f) Formula funding;
(g) Personnel matters;
(h) Union negotiations;
(i) Contracting procedures and obligations;
(j) Special curriculum areas;
(k) Students' rights and responsibilities;
(l) Education agency relations;
(m) Alternative sources of Federal grants;
(n) Juvenile justice;
(o) Teachers training and inservice options;
(p) Needs assessment, program development, proposal writing; and
(q) Other training activities school boards deem appropriate and applicable to their situation and which are approved by the Director.

§ 39.93 Allowable expenditures.

Allowable expenditures under this subpart are limited to:
(a) Contracting with individuals and organizations for training services,
(b) Membership fees in school boards' associations and purchase of their materials and publications,
(c) Membership reimbursement for subsistence and travel expenses incurred while participating in training activities; and
(d) Cooperative contracts with other school boards for joint training or technical assistance activities.

§ 39.94 Limitations on expenditures.

(a) No expenditure may be authorized except in accordance with a decision of record by the school board and each payment shall be made under written authorization of the board chairperson.
(b) Expenditures under this subpart may not be made for school board members' stipends or honorariums associated with participation in training activities. Payments for such may, however, come from the school's operational budget, if so designated and approved in the school's operational budget, if so designated and approved in the school's local educational finance plan. The maximum amounts of such payments shall be determined in accordance with the laws or regulations of the tribe involved and shall be subject to approval by the Director. In the absence of such tribal laws or regulations, such maximums shall be determined by the Director in consultation with the school board. Payments under this subpart may not be made to any employee of a school served by the school board being trained or assisted.

§ 39.95 Reporting of expenditures.

An accounting of all expenditures of school board training funds shall be maintained as a supplement to each school's public accounting records.

§ 39.96 Provision for annual adjustment.

The allocation of $5,000 per school may be annually adjusted by the Director.

§ 39.97 Training for agency school board.

Provisions for training agency school board members, except as they may also be members of local school boards, are not included in these local school board training funds. If required, such provision shall be incorporated in agency or area office educational administration training plans and budgets.

Subpart H—Student Transportation

§ 39.100 Definitions.

As used in this subpart, the term:
(a) *Basic transportation miles* means the daily average of all bus miles logged for round trip home-to-school transportation of day students.
(b) *Transported student* means the average number of students transported to school on a daily basis.
(c) *School bus* means a passenger vehicle, operated by an operator in the employ of, or under contract to, a Bureau operated or funded school, who is qualified to operate such a vehicle under State or Federal regulations governing the transportation of students; which vehicle is used to transport day students to and/or from home and the school.

§ 39.101 Purpose and scope.

The purpose of this section is to provide funds to each school for the round trip transportation of students between home and the school site.

§ 39.102 Allocation of transportation funds.

Transportation funds for FY 1980 shall be allocated to each school as follows:

(a) *Day students.* Funds shall be allocated to each school which provides daily transportation of students between the student's residence and the school site by the following formula:

(1) 180 × ($.85 per basic transportation mile + $.61 per transported student).

(2) The allocation shall be based on the daily average of transported students and basic transportation miles computed during the October and November count periods.

(3) This formula shall not apply to any dormitory which provides daily transportation between dormitory and the public school which the dormitory student attends.

(b) *Boarding school and dormitory students.* Funds shall be allocated to each boarding school and dormitory for the transportation of resident students according to the following criteria:

(1) For each student whose home is more than 1 mile and no more than 100 miles from the boarding school or dormitory, the school shall receive $3.20 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home to the school site. This provision applies only to those students for whom ground transportation is provided and for whom it is not necessary to provide air transportation.

(2) For each student whose home is more than 100 and no more than 350 miles from the boarding school or dormitory, the school shall receive $1.60 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home to the school site. This provision applies only to those students for whom ground transportation is provided and for whom it is not necessary to provide air transportation.

(3) For each student whose home is more than 350 miles from the boarding school or dormitory, the school shall receive $.48 per mile per student per year. The miles per student shall be the shortest driving distance one way from the student's home agency to the school site. This provision applies only to those students for whom ground transportation is provided and for whom it is not necessary to provide air transportation.

(4) For each student whose home is more than 350 miles from the boarding school or dormitory and for whom it is necessary to provide airplane transportation, the school shall receive $.60 per mile per student flown per year. The miles per student shall be the actual one way air miles between the airport closest to the school site and the closest to the student's home. Airplane transportation shall be provided only when ground transportation is unavailable or not cost-effective.

(5) For each student attending Mt. Edgecumbe Boarding School, Sitka, Alaska, who requires airplane transportation, the school shall receive $1.05 per mile per student flown per year. The miles per student shall be the one way air miles between the Sitka, Alaska airport and the airport nearest the student's home.

(6) At least 80% of the funds received by the school under (3), (4), and (5) above must be used for student travel between home and school.

§ 39.103 Annual transportation formula adjustment.

The Director will review transportation allotment factors each year and make changes in factors based on changes in transportation costs.

Subpart I—Interim Maintenance and Minor Repair Fund

§ 39.110 Establishment and funding of an Interim Maintenance and Minor Repair Fund.

There is established in the Division of Facilities Management a separate temporary fund entitled the Interim Maintenance and Minor Repair Fund. The Assistant Secretary shall cause the distribution of an amount of $1 million, under the FY 1980 Appropriation for the Bureau, from budget activity 3500, ''General Management and Facilities Operation'', to the direct use of schools, and shall create an appropriate account or subaccount for the Interim Maintenance and Minor Repair Fund and credit these funds thereto.

§ 39.111 Conditions for distribution.

Funds from the Interim Maintenance and Minor Repair Fund shall be distributed to Bureau operated and funded schools and shall be separately earmarked in local school financial plans solely for expenditure at the discretion of the school supervisor for cost of school facility maintenance and minor repair. These funds shall be used to meet immediate minor repair and maintenance needs.

§ 39.112 Allocation.

(a) Interim Maintenance and Minor Repair funds shall be allocated to all Bureau operated and contract schools based on the number of square feet of floor space used for that school's educational program, for student residence and for support facilities. Staff quarters shall be specifically excluded from the computation.

(b) Square footage figures used in determining school allocations shall be taken from the facilities inventory maintained by the Division of Facilities Engineering.

(c) In those cases, such as contract schools, where square footage figures are not now available, it shall be the responsibility of the Bureau's Division of Facilities Engineering to correct the information.

(d) Schools in Alaska shall receive a 25% cost adjustment increase in the computation of their allocation.

§ 39.113 Use of funds.

Funds allocated under this provision for maintenance and minor repair shall be used for no other purpose.

§ 39.114 Limitations.

Nothing in this provision shall be interpreted as relieving the Bureau branch of Facilities Management or its field offices of any responsibility for continuing to provide maintenance and repair service to schools through existing procedures.

Subpart J—Administrative Cost Formula

SOURCE: 56 FR 35795, July 26, 1991, unless otherwise noted.

§ 39.120 Purpose and scope.

The purpose of this subpart is to provide funds at the agency and area education offices for FY 1991 and future years for administration of all Bureau of Indian Affairs education functions, including but not limited to school operations, continuing education, early childhood education, post-secondary education and Johnson-O'Malley Programs.

§ 39.121 Definitions.

(a) *Agency Education Office* means a field office of the Office of Indian Education Programs providing administrative direction and supervision to one or more Bureau-operated schools as well as being responsible for all other education functions serving tribes within that agency's jurisdiction.

(b) *Area Education Office* means a field office of the Office of Indian Education Programs responsible for all education functions serving tribes not serviced by an agency education office an in some cases providing administrative direction to one or more off-reservation boarding schools not under an agency education office.

§ 39.122 Allotment of education administrative funds.

The total annual budget for agencies/areas shall be allotted to the Director and through him/her to agency and area education offices. This total budget shall be distributed to the various agency and area education offices as follows:

(a) Each agency or area education office as defined above shall receive a base amount of $50,000 for basic administrative costs; and

(b) Each agency or area education office as defined above shall receive an amount under these funds equal to two percent of the total higher education, Johnson-O'Malley and adult education funds administered by each office, except that the Navajo Agencies are restricted to a maximum of $50,000 for administering the Johnson-O'Malley and higher education programs; and

(c) Eighty percent of the remaining funds shall be distributed proportionately based on the number of schools operated under the jurisdiction of each agency or area education office, with

Bureau-operated schools counting as 1 and contract/grant schools counting as 0.6; and

(d) The remaining twenty percent shall be distributed proportionately based on the total weighted student units generated by all schools under the jurisdiction of each agency or area education office.

§ 39.123 Allotment exception for FY 1991.

For FY 1991 only, the Director may reserve an amount equal to no more than one half of the funds received in FY 1990 by those offices to be closed in FY 1991 to cover severance pay costs, lump sum leave payments and relocation costs for those individuals affected by the closures. Any balance uncommitted by March 31, 1991, shall be distributed in accordance with the formula in § 39.122.

Subpart K—Pre-kindergarten Programs

§ 39.130 Interim fiscal year 1980 and fiscal year 1981 funding for pre-kindergarten programs previously funded by the Bureau.

Those schools having pre-kindergarten programs funded fully or in part from Bureau education funds in fiscal year 1979 shall be funded from Bureau education funds by the Director in fiscal year 1980 and fiscal year 1981 at their fiscal year 1979 Bureau education funding levels. The fiscal year 1979 pre-kindergarten Bureau funding amount for each Bureau funded school shall be deducted from the school's fiscal year 1979 Bureau Education Budget amount prior to application of the phase-in provision detailed in § 39.19.

§ 39.131 Addition of pre-kindergarten as a weight factor to the Indian School Equalization Formula in fiscal year 1982.

The Director, in consultation with the tribes and school boards, shall determine appropriate weight factors needed to include pre-kindergarten programs in the Indian School Equalization Formula in fiscal year 1982. Based on a needs assessment, to be completed by January 1, 1980, pre-kindergarten programs shall be included in the Bureau's education request for fiscal year 1982.

Subpart L—Contract School Operation and Maintenance Fund

§ 39.140 Definitions.

Contract school operation and maintenance costs for fiscal year 1979 means the sum of costs for custodial salaries and fringe benefits, related supplies and equipment and equipment repair, insurance, and school operation utilities costs, where such costs are not paid by the Division of Facilities Management or other noneducation Bureau sources.

§ 39.141 Establishment of an interim fiscal year 1980 operation and maintenance fund for contract schools.

There is established in the Division of Facilities Management a separate fund entitled the Contract School Operation and Maintenance Fund. The Secretary shall cause the distribution of an amount of $2.5 million, under the fiscal year 1980 appropriation for the Bureau, from budget activity 3500. ''General Management and Facilities Operations'', to the schools through this fund and shall create an appropriate account or subaccount for the Contract School Operation and Maintenance Fund.

§ 39.142 Distribution of funds.

(a) Each contract school shall receive in fiscal year 1980 a portion of the Contract School Operation and Maintenance Fund determined by the percentage share which that school's fiscal year 1979 operation and maintenance cost represents in the total fiscal year 1979 operation and maintenance cost for all such schools.

(b) To be eligible for these funds, a contract school shall submit a detailed report of actual operation and maintenance costs for fiscal year 1979 to the Director by November 23, 1979. These cost figures will be subject to verification by the Director to assure their accuracy prior to the allotment of any funds under this subpart.

(c) Any funds generated under this subpart shall be included in the computation of the phase-in amount as set

forth in § 39.19 if supplemental operation and maintenance funds were included in a school's fiscal year 1979 3100 contract funds.

§ 39.143 Future consideration of contract school operation and maintenance funding.

The Assistant Secretary shall arrange for full funding for operation and maintenance of contract schools by fiscal year 1981.

PART 40—ADMINISTRATION OF EDUCATIONAL LOANS, GRANTS AND OTHER ASSISTANCE FOR HIGHER EDUCATION

Sec.
40.1 Appropriations for loans or grants.
40.2 Working scholarships.
40.3 Applications.
40.4 Security.
40.5 Repayments.

AUTHORITY: Sec. 11, 48 Stat. 986; 25 U.S.C. 471.

SOURCE: 22 FR 10533, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 40.1 Appropriations for loans or grants.

Funds appropriated by Congress for the education of Indians may be used for making educational loans and grants to aid students of one-fourth or more degree of Indian blood attending accredited institutions of higher education or other accredited schools offering vocational and technical training who reside within the exterior boundaries of Indian reservations under the jurisdiction of the Bureau of Indian Affairs or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs. Such educational loans and grants may be made also to students of one-fourth or more degree of Indian blood who reside near the reservation when a denial of such loans or grants would have a direct effect upon Bureau programs within the reservation. After students meeting these eligibility requirements are taken care of, Indian students who do not meet the residency requirements but are otherwise eligible may be considered.

[33 FR 9708, July 4, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 40.2 Working scholarships.

Working scholarships may be granted to Indians who wish to earn their board and room by part-time work at Federal boarding schools that are located near a college, trade, or vocational school.

§ 40.3 Applications.

Applications for educational loans, grants, and working scholarships shall be submitted through the superintendent or officer in charge of the agency at which the applicant is enrolled in the manner prescribed by the Commissioner.

§ 40.4 Security.

If a borrower or cosigner has security to offer for an educational loan it must be given in an amount adequate to protect the loan.

§ 40.5 Repayments.

Repayment schedules for educational loans may provide not to exceed two years for repayment for each year in school.

PART 41—GRANTS TO TRIBALLY CONTROLLED COMMUNITY COLLEGES AND NAVAJO COMMUNITY COLLEGE

Subpart A—Tribally Controlled Community Colleges

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41.27 General provisions.
41.28 Criminal penalties.

AUTHORITY: Secs. 114 and 203(a), Pub. L. 95–471, 25 U.S.C. 1815, 25 U.S.C. 640c–1(c).

SOURCE: 44 FR 67042, Nov. 21, 1979, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

Subpart A—Tribally Controlled Community Colleges

§ 41.1 Purpose.

The policy of the Department of the Interior is to support and encourage the establishment, operation, and improvement of tribally controlled community colleges to ensure continued and expanded educational opportunities for Indian students. The regulations in this subpart prescribe procedures for providing financial and technical assistance to this end under the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95–471, 92 Stat. 1325, 25 U.S.C. 1801 *et seq.*).

§ 41.2 Scope.

The regulations in this subpart are applicable to the provision of financial and technical assistance to Community Colleges under title I of the Act. They do not apply to the provision of assistance to Navajo Community College. Subpart B of this part applies to assistance to Navajo Community College under title II of the Act.

§ 41.3 Definitions.

As used in this subpart A:

(a) *Academic term* means a semester, trimester, or other such period (not less than six (6) weeks in duration) into which a community college normally subdivides its academic year, but does not include a summer term.

(b) *Academic year* means a twelve month period established by a community college and approved by the Director of Education as the annual period for the operation of the college's education programs.

(c) *The Act* means the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95–471, 92 Stat. 1325, 25 U.S.C. 1801 *et seq.*).

(d) *Assistant Secretary* means the Assistant Secretary for Indian Affairs of the Department of the Interior, or his/her duly authorized representative.

(e) *Community College* means an institution of higher education which (1) is formally controlled or operated and managed by the governing body of an Indian Tribe or by the governing bodies of two or more Indian Tribes, or (2) is established or is otherwise sanctioned or chartered by resolution, ordinance, or other official action (which is still in full force and effect) of such governing body or bodies. However, for purposes of this definition, only one such institution shall be recognized with respect to any one Tribe. A Community College that meets the requirements of this definition with respect to more than one Tribe must meet such requirements with respect to at least one Tribe that has no other currently formally controlled, operated and managed, established, sanctioned, or chartered Community College.

(f) *Director of Education* means the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs, or his/her duly authorized representative.

(g) *Full time equivalent* or *FTE*, means the number of Indian students (1) enrolled full-time for an entire academic term at a community college, calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term, plus (2) the full-time equivalent of the number of other Indian students who are enrolled part-time for an entire academic term at a community college (determined on the basis of the quotient of the sum of credit hours for which all such part-time students are registered during such academic term, divided by twelve (12)), calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term. The formula for calculating the Indian FTE for an academic term is expressed mathematically as FTE=FT+PTCR/12 where FT is the number of full time Indian students (those carrying 12 or more credit hours at the end of the sixth week of the academic term) and PTCR is the number of credit hours for which part-time Indian students are

registered at the end of the sixth week of an academic term.

(h) *Indian* means a person who is a member of an Indian Tribe and is eligible to receive services from the Secretary of the Interior because of his/her status as an Indian.

(i) *Indian Tribe* means an Indian tribe, band, nation, pueblo, rancheria, or other organized group or community, including any Alaskan Native Village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(j) *Institution of higher education* as defined in Pub. L. 95–471 (incorporating in part 1201 of the Higher Education Act of 1965), means an educational institution in any State which

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate,

(2) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree,

(3) Is a public or other nonprofit institution, and

(4) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited,

(A) Is an institution with respect to which the Commissioner of Education has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or

(B) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

Such term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (1), (2), (3), and (4). Such term also includes a public or nonprofit private educational institution in any State which, in lieu of the requirement in clause (1), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

(k) *National Indian Organization* means any organization of Indians, found by the Director of Education to be nationally based, representing a substantial Indian constituency, and expert in the field of Indian education. Notice of such findings shall be published in the FEDERAL REGISTER with an opportunity for comment from the public and no such finding shall be effective earlier than 30 days after publication.

(l) *Operating expenses of education programs* means the obligations and expenditures of a community college for post-secondary activities, including administration, instruction, attendance, health and other student services, operation, maintenance and repair of plant, fixed charges, and other related expenses, but not including expenditures for the acquisition or construction of academic facilities. (The term *academic facilities* means structures suitable for use as classrooms, laboratories, libraries, and related facilities necessary or appropriate for instruction of students, or for research, or for administration of the educational or research programs of an institution of higher education or as dormitories or student services buildings, and maintenance, storage, support, or utility facilities essential to operation of the foregoing facilities.)

(m) *Part-time* means registered for less than twelve (12) credit hours for an academic term; *full-time* means registered for twelve (12) or more credit hours for an academic term.

(n) *Unused portion of received funds* means the amount of financial assistance provided under this subpart to a Community College for an academic year which has not been obligated or

expended by the Community College by July 1 of that academic year.

§ 41.4 Eligible recipients.

Financial assistance under this subpart shall be available only to a Community College which:

(a) Is governed by a board of directors, regents, or trustees, a majority of whom are Indians;

(b) Demonstrates its adherence to stated goals, a philosophy, or a plan of operation which is directed to meet the needs of Indians, and has formally adopted, in writing, such goals, philosophy, or plan of operation, which may be in the form of a constitution, bylaws, or policy statement of the Community College;

(c) If in operation for more than one year, has students a majority of whom are Indian; and

(d) Upon completion of a feasibility study, receives a positive determination, and;

(e) Is not in violation of § 41.11 of this subpart.

§ 41.5 Eligible activities.

Financial assistance under this subpart shall be available to defray only the operating expenses of education programs of Community Colleges. Financial assistance under this subpart shall not be used for religious worship or sectarian instruction, but nothing in this subpart shall be construed as barring instruction in comparative religions or cultures or in languages of Indian tribes.

§ 41.6 HHS participation.

The Assistant Secretary for Indian Affairs is authorized to enter into an agreement with the Assistant Secretary for Education, Department of Health and Human Services, and to revise such agreement as necessary, to assist the Director of Education in the development of plans, procedures, and criteria for feasibility studies under this subpart, and to provide the Director with technical assistance in conducting such feasibility studies, including determinations as to the reasonable number of students required to support a Community College.

[44 FR 67042, Nov. 21, 1979. Redesignated at 47 FR 13327, Mar. 30, 1982; 48 FR 13414, Mar. 31, 1983]

§ 41.7 Feasibility studies.

(a) Grants under § 41.8 of this subpart may be made to a Community College only after a positive determination of feasibility as provided in this section.

(b) Within thirty (30) days of receiving a resolution or other duly authorized request from the governing body of one or more Indian Tribes, the Director of Education shall initiate a feasibility study to determine whether there is justification to encourage and maintain a Community College for such tribe or tribes. The feasibility study shall give consideration to the following factors:

(1) Financial feasibility based upon potential enrollment;

(2) Evidence of low tribal levels of tribal matriculation in and graduation from postsecondary educational institutions;

(3) Tribal, linguistics, or cultural differences;

(4) Isolation;

(5) Presence of alternate education sources;

(6) Proposed curriculum;

(7) The benefits of continued and expanded educational opportunities for Indian students.

(c) The Director of Education will issue detailed guidelines for conducting and analyzing the feasibility studies.

(d) Feasibility studies under this section shall be conducted in consultation with the tribal governing body or bodies involved or their designated representatives. Each feasibility study shall be completed and filed by the Director of Education within sixty (60) days after the feasibility study has been initiated. The study shall be filed with (1) the Assistant Secretary, (2) the tribal governing body or bodies requesting the studies, and (3) with the board of directors, regents, or trustees of the Community College, if already established.

(e) In the case of any feasibility study which results in a negative determination by the Director of Education, a Tribe requesting the study

may within thirty (30) days of receipt of the study or of notice of such determination file a notice of appeal with the Assistant Secretary. Following the timely filing of a Tribe's notice of appeal, the Tribe and Community College shall have a right to a formal review of the feasibility study, including a hearing upon reasonable notice within sixty (60) days before the Assistant Secretary (or his/her designee, other than the Director of Education or any federal employee under the Director's supervision). At the hearing, the appealing Tribe or the Community College (or both) may present additional evidence or arguments to justify feasibility. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling either confirming, modifying, or reversing the original determination. The ruling, which shall be final for the Department, shall be mailed or otherwise delivered to the appealing Tribe and the Community College within one week of its issuance. In any case where the original negative determination is not reversed, the Assistant Secretary's ruling shall specify the grounds for the decision and state the manner in which the determination related to each of the factors specified.

(f) A negative determination shall not prevent a Tribe from requesting another feasibility study, but no more than one feasibility study shall be requested for any given Community College per year.

§ 41.8 Grants.

(a) Each Community College which has received a positive feasibility study determination under § 41.7 of this subpart shall be entitled to apply for financial assistance under this subpart.

(b) Except with respect to applications for grants for the 1979–1980 academic year, each Community College shall make an application to the Director of Education before January 31, of the year preceding the academic year for which financial assistance is requested. Each application must contain the following information:

(1) The name and address of the Community College and the names of the members of the governing board and the number of its members who are Indian;

(2) A statement that the Community College has received a positive feasibility determination and the date thereof;

(3) A written statement of the goals, philosophy, or proposed plan of operation sufficient to demonstrate that its education program or proposed program is designed to meet the needs of Indians;

(4) In the case of a Community College which has been in operation for more than one year, a statement of the total number of FTE Indian students and the total number of all FTE students;

(5) If the Community College has not yet begun operations, a statement of expected enrollment, including the total number of FTE students and the number of FTE Indian students;

(6) The name and address of the Indian Tribe or Tribes which control or operate and manage, or have established, sanctioned, or chartered the Community College, and a statement as to which of those Tribes have not done so with respect to any other Community College;

(7) A curriculum, which may be in the form of a college catalog or like publication;

(8) A proposed budget, showing total expected operating expenses of education programs and expected revenues from all sources for the academic year to which the information applies;

(9) An assurance that the Community College will not deny admission to any Indian student because that student is not a member of a specific tribe or because such student is a member of a specific tribe, and will comply with the requirements set forth in § 41.11 of this subpart together with any request and justification for a specific waiver of any requirement of 25 CFR part 276 which the Community College believes to be inappropriate;

(10) Certification by the chief executive officer of the Community College that the information on the application is complete and correct and that the application has been filed with the governing body or bodies of the Tribe or Tribes which control or have sanctioned or chartered it.

(c)(1) Within thirty (30) days of receiving an application required under paragraph (b) of this section, the Director of Education shall review the application submitted by the Community College and any comments with respect thereto filed by the Tribe(s) or by any national Indian organization(s) whose assistance has been requested by the Community College, and make a grant award in an amount determined under paragraph (d) of this section to the Community College if the application qualifies the Community College to receive a grant.

(2) In the case of any Community College whose application is not approved, the Director shall promptly send a notice of such action to the Community College. Such notice shall include a statement of the specific reasons for not approving the application and a statement advising the College of its right within thirty (30) days to amend or supplement the application on file to rectify the defect.

(3) Final disapproval of a grant application by the Director after the thirty day period referred to in paragraph (c)(2) of this section, or a failure of the Director of Education to approve an application within thirty (30) days of its receipt may be appealed by a Community College in the same manner as provided in paragraphs (d) and (f) of § 41.7.

(4) A Grant award under an approved application shall be evidenced by a grant agreement, signed by the Director of Education, incorporating the application and the provisions required by § 41.11.

(d)(1) In fiscal year 1980, each Community College which qualifies for a grant will receive a grant for academic year 1979–80; thereafter each Community College which qualifies for a grant shall receive a grant for the academic year commencing after the date of approval of its application. Except as provided in paragraph (d)(3) of this section grants shall be in an amount equal to $4,000 multiplied by the number of FTE Indian students in attendance at such college during each academic term divided by the number of academic terms in the academic year, except that no such grant shall exceed the annual operating expenses of the education programs provided by the Community College. The mathematical formula for calculating the base grant is BG (Base Grant)=

$$\$4{,}000 \times \frac{FTE_{TERM\ 1} + FTE_{TERM\ 2} + \ldots + FTE_{TERM\ N}}{N}$$

where FTE is the Indian FTE for each of the academic terms during the academic year calculated in conformity with § 41.3(g) of this subpart and N is the number of academic terms in the academic year.

(2) For the first Federal fiscal year for which funds are appropriated for grants under this subpart, not less than eight (8) nor more than fifteen (15) grants shall be approved; priority in awarding such grants shall be given to Community Colleges which are operating on October 17, 1978, and which have a history of service to the Indian people. (If more than fifteen (15) Community Colleges meeting these two (2) conditions submit applications for the first fiscal year, a further priority for awarding grants among them shall be given to those who appear to be in the best position to fulfill the purpose of the Act and to those whose continued existence would be threatened if they did not receive such a grant).

(3) All grants under this section shall be subject to the availability of appropriations and the amount thereof shall be ratably reduced for all Community Colleges if the sums appropriated for any fiscal year for financial assistance under this subpart are not sufficient to pay the full amounts to which the eligible Community Colleges are otherwise entitled under paragraph (d)(1) of this section.

(e) The Director of Education shall authorize payments to each such Community College in advance installments by letter of credit or Treasury check in an amount equal to fifty percent (50%) of the grant amount available for allotment to such Community College for such academic year under paragraph (d) of this section on or before October 1st of such College's academic year (except for 1979–80) or the first day on which appropriations for the fiscal year beginning on such date

are available for obligation by BIA whichever occurs later, based on the number of FTE Indian students calculated on the basis of registrations as in effect at the conclusion of the sixth week of the final academic term of the preceding academic year. On or before January 1st (or such other date that is the first day of the fifth month) of such College's academic year, payments shall be made in the form of advance installments to each Community College in an amount equal to seventy-five percent (75%) of the grant amount available for allotment to such Community College for such academic year under paragraph (d) of this section, calculated on the basis of registrations at the conclusion of sixth week of the academic year, less the amount previously advanced for such academic year. On or before July 1st (or such other date that is the first day of the eleventh month) of each such academic year the balance of the grant amount to which each College is entitled under paragraph (d) of this section shall be paid to such College. In the event that additional sums are appropriated to which such Community Colleges are entitled under section 110(a) of the Act and paragraph (d) of this section, these amounts shall be included in such final payments.

(f) If with respect to any academic year the amounts of financial assistance hereunder have been ratably reduced as provided in paragraph (d)(3) of this section and additional funds have not been appropriated to pay the full amount of such reductions on or before June 1st of such year, the Director of Education shall notify each Community College of such fact in writing, and each Community College shall report in writing to the Director of Education on or before July 1st of such year the amount of unused portion of received funds. The total of such reported unused portions of received funds shall be reallocated by the Director of Education in proportion to the amount of financial assistance to which each Community College is entitled under paragraph (d) but which has not been provided due to the ratable reductions provided for therein, (except that no Community College shall receive more than the total annual cost of the education programs provided by such College) and payments shall be made reflecting such reallocations on or before August 1st of such academic year.

(g) If the Director of Education determines that a Community College has received, through mistake or fraud, payments of financial assistance under this subpart to which it was not entitled, the Director shall promptly notify the college, which may appeal the Director's determination under the procedures set forth in § 41.7, and adjust the amount of payments to the college under this subpart for the same or subsequent academic years to compensate for such overpayments or otherwise attempt to recover such overpayments.

(h) Eligibility for grants under this subpart shall not, by itself, bar a Community College from qualifying for or receiving financial assistance under any other Federal program for which it may qualify.

§ 41.9 Reports.

Each Community College receiving financial assistance under this subpart shall provide to the Director of Education on or before December 1st of each year a report which shall include an accounting of the amounts and purposes for which such financial assistance was expended during the preceding academic year; the annual cost of education programs of the Community College from all sources for such academic year; and a final report of the performance based upon the criteria set forth in the Community College's stated goals, philosophy or plan of operation. Upon reasonable cause, the Director of Education may extend the period for submitting the annual report. Each Community College shall in addition report to the Director of Education its FTE Indian student enrollment for each academic term of the academic year within three weeks of the date such FTE calculation is made.

§ 41.10 Technical assistance.

The Director of Education shall furnish technical assistance either directly or through contract to any Community College requesting it. Such assistance shall be initiated within thirty (30) days of a Community College's request in writing. In any case, where

the type and source of technical assistance is specified in the request, the Director, to the extent possible or feasible, shall provide the type of technical assistance through the source so specified. Technical assistance may include, but is not limited to, consulting services for the development of programs, plans, and feasibility studies and accounting, and other technical advice. In awarding of contracts for technical assistance, preference shall be given to an organization designated by the Community College to be assisted. Denials of requests for technical assistance under this section shall be made in writing and sent to the applicant within thirty (30) days of the request, together with a statement of the reason for denial. An appeal under this section may be undertaken in the same manner as in the case of negative determinations of feasibility under §41.7 of his subpart.

§41.11 General provisions.

The general requirements for grant administration in this section are applicable to all grants provided under this subpart to Community Colleges:

(a) Services or assistance provided to Indians by Community Colleges aided under this subpart shall be provided in a fair and uniform manner, and admission to any such Community College shall not be denied to any Indian student because such individual is not a member of a specific Indian tribe or because such individual is a member of a specific Indian tribe.

(b) Except as may be otherwise provided in this subpart, any Community College receiving financial assistance under this subpart shall comply with part 276 of this title, subject to any express waiver of specific inappropriate provisions of part 276 that may be granted by the Assistant Secretary after request and justification by the Community College.

(c) A Community College shall have the right to appeal any adverse decision of the Director of Education under a grant agreement to the Assistant Secretary by filing written notice of appeal with the Assistant Secretary within thirty (30) days after the adverse decision. Within thirty (30) days after receiving notice of appeal, the Assistant Secretary shall conduct a formal hearing at which time the College may present evidence and argument to support its appeal. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling on the appeal confirming, modifying, or reversing the Director of Education's decision, the Assistant Secretary shall state in detail the basis for his/her ruling. The ruling of the Assistant Secretary on an appeal shall be final for the Department of the Interior.

§41.12 Annual budget.

Appropriations under title I of the Tribally Controlled Community College Assistance Act of 1978 shall be separately identified in the Bureau of Indian Affairs Budget Justification. Funds appropriated for grants under this subpart shall not be commingled with other funds expended by the Bureau of Indian Affairs.

§41.13 Criminal penalties.

Persons submitting or causing to be submitted to the Bureau any false information in connection with any application, report, or other document, upon which the provision of Federal financial assistance or any other payment of Federal funds is based, may be subject to criminal prosecution under provisions such as sections 287, 371, or 1001 of title 18, U.S. Code.

Subpart B—Navajo Community College

§41.20 Policy.

It is the policy of this Department to support and encourage the establishment, operation, and improvement of tribally controlled community colleges in order to ensure continued and expanded educational opportunities for Indian students. The regulations in this subpart prescribe procedures for providing financial and technical assistance to this end for the Navajo Community College under the Navajo Community College Act, as amended (25 U.S.C. 640a–c).

§41.21 Scope.

The regulations in this subpart are applicable to the provision of financial

and technical assistance to Navajo Community College pursuant to the Navajo Community College Act of December 15, 1971 (Pub. L. 92–189, 85 Stat. 646, 25 U.S.C. 640a–c) as amended by the Navajo Community College Assistance Act of 1978, Title II of the Tribally Controlled Community College Assistance Act of 1978 (Pub. L. 95–471, 92 Stat. 1325, 1329, 25 U.S.C. 640c). Regulations applicable to Tribally Controlled Community Colleges other than Navajo Community College are found in subpart A of this part 41.

§ 41.22 Definitions.

As used in this subpart:

(a) *Academic term* means a semester, trimester, or other such period (not less than six (6) weeks in duration) into which the college normally subdivides its academic year, but does not include a summer term.

(b) *Academic year* means a twelve month period established by the college and approved by the Director of Education as the annual period for the operation of the college's education programs.

(c) *The Act* means the Navajo Community College Act of December 15, 1971 (Pub. L. 92–189, 85 Stat. 646) as amended by the Navajo Community College Assistance Act of 1978, (Pub. L. 95–471, title II, 92 Stat. 1329, 25 U.S.C. 640a *et seq.*).

(d) *Assistant Secretary* means the Assistant Secretary for Indian Affairs of the Department of the Interior or his/her duly authorized representative.

(e) *College* means the institution known as Navajo Community College established by the Navajo Tribe.

(f) *Director of Education* means the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs, or his/her duly authorized representative.

(g) *Full time equivalent* or *FTE* means the number of Indian students (1) enrolled full-time for an entire academic term at the College, calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term, plus (2) the full-time equivalent of the number of other Indian students who are enrolled part-time for an entire academic term at the College (determined on the basis of the quotient of the sum of credit hours for which all such part-time students are registered during such academic term divided by (12)), calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term. The formula for calculating the Indian FTE for an academic term is expressed mathematically as FTE=FT+PTCR/12 where FT is the number of full time Indian students (those carrying 12 or more credit hours at the end of the sixth week of the academic term) and PTCR is the number of credit hours for which part-time Indian students are registered at the end of the sixth week of an academic term.

(h) *Indian* means a person who is a member of an Indian tribe and is eligible to receive services from the Secretary of the Interior because of his/her status as an Indian.

(i) *Indian Tribe* means an Indian tribe, band, nation, pueblo, rancheria, or other organized group or community, including any Alaskan Native Village or Regional or Village Corporation as defined in or established under the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(j) *Operating and Maintenance Expenses of Education Programs* means the obligation and expenditures by the College for post-secondary education activities including administration, instruction, attendance, health and other student services, operation, maintenance and repair of plant, and fixed charges, and other related expenses, but not including obligations or expenditures for the acquisition or construction of academic facilities (as defined in § 41.3(l) of subpart A).

§ 41.23 Eligible activities.

Financial assistance under this subpart shall be available to defray only the operating and maintenance expenses of education programs of the College. Financial assistance under this subpart shall not be used for religious worship or sectarian instruction, but nothing in this subpart shall be construed as barring instruction in comparative religions or cultures or in languages of Indian tribes.

§ 41.24 Grants.

(a) Navajo Community College is entitled to annual grants for operation and maintenance of the College in amounts based upon the number of Full-Time Equivalent Indian students in attendance.

(b) Annually, in the manner and within the deadline established by the Director of Education, the Navajo Community College shall submit an application in the form of a statement of its FTE enrollment (total and Indian) for the next academic year. The statement shall include a description of the College's curriculum, which may be in the form of a College catalog or like publication, and a proposed budget showing total expected operating expenses of educational programs and expected revenue from all sources for the academic year for which the information applies. The statement shall be certified by the chief executive officer of the College and shall certify that a copy of that statement has been submitted to the Navajo Tribe.

(c) Annual budget request for the College shall be sparately identified in the Bureau of Indian Affairs Budget Justifications. Funds appropriated for grants under this subpart shall not be commingled with other funds appropriations historically expended by the Bureau of Indian Affairs for programs and projects normally provided on the Navajo Reservation for Navajo beneficiaries.

(d) Within thirty (30) days of submission of the statement required under paragraph (b) of this section, the Director of Education shall make a grant award to the College in an amount determined under paragraph (e) of this section. The grant award shall be evidenced by a grant agreement signed by the Director of Education, incorporating the grant application and including the provisions required by § 41.27 of this subpart.

(e) The College shall be eligible to receive a grant for the fiscal year beginning October 1, 1979, and for each succeeding year, in an amount equal to $4,000 multiplied by the number of FTE Indian students in attendance at the College during each academic term divided by the number of academic terms in the academic year, except that no such grant shall exceed the annual operating expenses of the education programs provided by the College. The mathematical formula for calculating the base grant is BG (Base Grant)=

$$\$4{,}000 \times \frac{FTE_{TERM\ 1} + FTE_{TERM\ 2} + \ldots + FTE_{TERM\ N}}{N}$$

where FTE is the Indian FTE for each of the academic terms during the academic year calculated in conformity with § 41.22(g) of this subpart and N is the number of academic terms in the academic year. The amount and payment of such grants shall be subject to the availability of annual appropriations.

(f) The Director of Education shall authorize payments to the College in advance installments by letter of credit or Treasury check in an amount equal to fifty percent (50%) of the grant amount available for allotment to the College for such academic year under paragraph (e) of this section on or before October 1st of such academic year (except 1979–80) or the first day on which appropriations for the fiscal year beginning on such date are available for obligation by BIA, whichever occurs later, based on the number of FTE Indian students calculated on the basis of registrations as in effect at the conclusion of the sixth week of the final academic term of the preceding year. On or before January 1st (or such other date that is the first day of the fifth month) of such academic year, payment shall be made in the form of such advance installments to the College in an amount equal to seventy-five percent (75%) of the grant amount available for allotment to the College for such academic year under paragraph (e) of this section, calculated on the basis of registrations as in effect at the conclusion of the sixth week of the academic year, less the amount previously advanced for such academic year. On or before July 1st (or such other date that is the first day of the eleventh month) of such academic year, the balance of the grant amount to which the College is entitled under paragraph (e) of this section shall be paid to the College. In

the event that additional sums are appropriated for the benefit of the College, these sums shall be included in the final payment.

(g) Overpayments of grants under this subpart may be recovered in the manner provided by § 41.8(g) of subpart A.

(h) Payments to the Navajo Community College under this subpart shall not disqualify the College from applying for or receiving grants or contracts under any other Federal programs for which it may qualify.

§ 41.25 Reports.

The Navajo Community College shall provide the Director of Education on or before September 1st of each year a report which shall include an accounting of the amounts and purposes for which financial assistance under this subpart was expended during the preceding academic year, the annual cost of the education programs of the College from all sources for such academic year, and a final report of the performance based upon the criteria set forth in the College's stated goals, philosophy or plan of operation. Upon reasonable cause, the Director of Education may extend the period for submitting the annual report. The college shall in addition report to the Director of Education its FTE Indian Student enrollment for each academic term of the academic year within three weeks of the date such FTE calculation is made.

§ 41.26 Technical assistance.

The Director of Education shall furnish technical assistance, either directly or through contract, to the College when requested in writing. Such assistance shall be initiated within thirty (30) days of the College's request. In any case in which the form and source of technical assistance is specified in the request, the Director of Education shall to the extent possible or feasible provide technical assistance in the form requested and through the source so specified. Technical assistance may include, but is not limited to, consulting services in the development of annual statements and reports required under this subpart and accounting, and other technical advice and assistance.

§ 41.27 General provisions.

The general requirements for grant administration in this section are applicable to all grants provided under this subpart to the Navajo Community College.

(a) Services or assistance provided to Indians by the College with the financial assistance provided under this subpart shall be provided in a fair and uniform manner, and admission to the College shall not be denied any Indian student because such individual is not a member of a specific Indian tribe or because such individual is a member of a specific Indian tribe.

(b) Except as may be otherwise provided in this subpart, the College shall comply with part 276 of this title, subject to express waiver of specific inappropriate provisions of part 276 that may be granted, after request and justification by the College by the Assistant Secretary.

(c) In addition to any other right the college may have under this subpart, the College shall have the right to appeal any adverse decision of the Director of Education under a grant agreement to the Assistant Secretary by filing written notice of appeal with the Assistant Secretary within thirty (30) days of the adverse decision. Within thirty (30) days after receiving notice of appeal, the Assistant Secretary shall conduct a formal hearing at which time the College may present evidence and argument to support its appeal. Within thirty (30) days of the hearing, the Assistant Secretary shall issue a written ruling on the appeal confirming, modifying or reversing the decision of the Director of Education. In the case of a ruling not reversing the Director of Education's decision, the Assistant Secretary shall state in detail the basis for his/her ruling. The ruling of the Assistant Secretary on an appeal shall be final for the Department of the Interior.

§ 41.28 Criminal penalties.

Persons submitting or causing to be submitted to the Bureau any false information in connection with any application, report, or other document, upon which the provision of the Federal financial assistance, or any other payment of Federal funds, is based,

may be subject to criminal prosecution under provisions such as sections 287, 371, or 1001 of title 18, U.S. Code.

PART 42—STUDENT RIGHTS AND DUE PROCESS PROCEDURES

Sec.
42.1 Purpose.
42.2 Application to Bureau schools.
42.3 Rights of the individual student.
42.4 Due process.
42.5 Application to schools under Bureau contract.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 39 FR 32741, Sept. 11, 1974, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 42.1 Purpose.

The regulations in this part govern establishing programs of student rights and due process procedures in Bureau of Indian Affairs schools and in schools that are operating under contract with the Bureau of Indian Affairs.

§ 42.2 Application to Bureau schools.

All Bureau of Indian Affairs schools shall be governed by the regulations set forth in this part and said regulations shall be expressly included as a part of the local school regulations of each Bureau of Indian Affairs school. Upon admission, all students of Bureau of Indian Affairs schools shall be given a copy of the school regulations governing the conduct of students and shall be notified of any amendments thereto.

§ 42.3 Rights of the individual student.

Individual students at Bureau of Indian Affairs schools have, and shall be accorded, the following rights:

(a) The right to an education.

(b) The right to be free from unreasonable search and seizure of their person and property, to a reasonable degree of privacy, and to a safe and secure environment.

(c) The right to make his or her own decisions where applicable.

(d) The right to freedom of religion and culture.

(e) The right to freedom of speech and expression, including symbolic expression, such as display of buttons, posters, choice of dress, and length of hair, so long as the symbolic expression does not unreasonably and in fact disrupt the educational process or endanger the health and safety of the student or others.

(f) The right to freedom of the press, except where material in student publications is libelous, slanderous, or obscene.

(g) The right to peaceably assemble and to petition the redress of grievances.

(h) The right to freedom from discrimination.

(i) The right to due process. Every student is entitled to due process in every instance of disciplinary action for alleged violation of school regulations for which the student may be subjected to penalties of suspension, expulsion, or transfer.

§ 42.4 Due process.

Due process shall include:

(a) Written notice of charges within a reasonable time prior to a hearing. Notice of the charges shall include reference to the regulation allegedly violated, the facts alleged to constitute the violation, and notice of access to all statements of persons relating to the charge and to those parts of the student's school record which will be considered in rendering a disciplinary decision.

(b) A fair and impartial hearing prior to the imposition of disciplinary action absent the actual existence of an emergency situation seriously and immediately endangering the health or safety of the student or others. In an emergency situation the official may impose disciplinary action not to exceed a temporary suspension, but shall immediately thereafter report in writing the facts (not conclusions) giving rise to the emergency and shall afford the student a hearing which fully comports with due process, as set forth herein, as soon as practicable thereafter.

(c) The right to have present at the hearing the student's parent(s) or guardian(s) (or their designee) and to be represented by lay or legal counsel of the student's choice. Private attorney's fees are to be borne by the student.

(d) The right to produce, and have produced, witnesses on the student's

behalf and to confront and examine all witnesses.

(e) The right to a record of hearings of disciplinary actions, including written findings of fact and conclusions in all cases of disciplinary action.

(f) The right to administrative review and appeal.

(g) The student shall not be compelled to testify against himself.

(h) The right to have allegations of misconduct and information pertaining thereto expunged from the student's school record in the event the student is found not guilty of the charges.

§ 42.5 Application to schools under Bureau contract.

Non-Bureau of Indian Affairs schools which are funded under contract with the Bureau of Indian Affairs must also recognize these student rights.

PART 43—MAINTENANCE AND CONTROL OF STUDENT RECORDS IN BUREAU SCHOOLS

Sec.

43.1 Purpose and scope.
43.2 Definitions.
43.3 Student rights.
43.4 Annual notification of rights.
43.5 Access to records.
43.6 Limitations on access.
43.7 Access rights.
43.8 Destruction of records.
43.9 Procedures for granting access.
43.10 Right to challenge.
43.11 Informal proceedings.
43.12 Right to a hearing.
43.13 Right of appeal.
43.14 Consent.
43.15 Content of consent.
43.16 Copy to be provided to parents or eligible students.
43.17 Release of information for health or safety emergencies.
43.18 Record of access.
43.19 Transfer of information by third parties.
43.20 Directory information.
43.21 Standards for collection and maintenance of student records.
43.22 Assuring integrity of records.
43.23 Conduct of employees.

AUTHORITY: 35 Stat. 72 (25 U.S.C. 295); Pub. L. 93–579, 88 Stat. 1896; Sec. 438, Pub. L. 93–380, as amended; Pub. L. 94–142.

SOURCE: 43 FR 52024, Nov. 8, 1978, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 43.1 Purpose and scope.

This part contains the regulations of the Bureau of Indian Affairs, U.S. Department of the Interior, governing the maintenance, control, and accessibility of student records. This part will apply to all educational institutions under the jurisdiction of the Bureau of Indian Affairs, whether operated under contract or otherwise.

§ 43.2 Definitions.

As used in this part:

(a) *Assistant Secretary* means the Assistant Secretary—Indian Affairs, Department of the Interior.

(b) *Educational institution* means any institution operated under the jurisdiction of the Bureau of Indian Affairs either directly or by contract, including, but not limited to, schools or dormitories from which Indian students attend public schools.

(c) *Eligible student* means a student who has become 18 years of age or is attending an institution of post-secondary education. When a student becomes an *eligible student*, the permission required of and the rights given to the parents of the student shall thereafter only be required of and given to the student.

(d) *Parent* means a natural parent, an adoptive parent, the legal guardian, or a legal custodian of a student. (Where the natural parents are unavailable, a required written parental consent may be obtained from the person who has assumed custody of the student.) For purposes of the Education of All Handicapped Children Act, the term *parent* also includes a *surrogate* as referred to in 20 U.S.C. 1415(b)(1)(B).

(e) *Student records* means those records, files, documents, and other materials which contain information directly related to a student and which are maintained by an educational institution, or by a person acting for that institution. The term does not include:

(1) Records of any educational personnel which are in the sole possession of the maker and which are not accessible or revealed to any other person except a substitute.

(2) Records made and maintained in the normal course of business which relate exclusively to persons who are employed in an educational institution but do not attend that institution.

(3) Directory information as given in §43.20.

(4) Records on a student who is 18 years of age or older, or is attending an institution of post-secondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

§43.3 Student rights.

The regulations in this part do not prevent educational institutions from giving noneligible students rights similar to those given to parents and eligible students. Educational institutions may do so at their discretion.

§43.4 Annual notification of rights.

(a) Each educational institution to which this part applies and which maintains records on students shall inform parents or eligible students of the rights given them by this part.

(b) In meeting the requirement in paragraph (a) of this section the educational institution shall give notice to parents and eligible students at least annually of the following:

(1) The types of education records and information contained in them which are directly related to students and maintained by the institution.

(2) The name and position of the official responsible for maintaining each type of record, the persons who have access to those records, and the purpose for which they have access.

(3) The policies of the institution for reviewing and expunging those records.

(4) The procedures established by the institution under §43.5.

(5) The procedures for challenging the content of education records including those in §43.10.

(6) The cost, if any, which will be charged to the parent or eligible student for reproducing copies of records under §43.5.

(7) The categories of information which the institution has designated as ''directory information'' under §43.20.

(c) The notice given to a parent or eligible student under this section shall be in a language considered by the institution to be understandable by the parent or eligible student.

§43.5 Access to records.

Educational institutions shall give parents of students or eligible students, who are or have been in attendance at the institutions, access to student records, except as stated in §43.6.

§43.6 Limitations on access.

Educational institutions are not required to make available to students the following materials:

(a) Financial records of the parents of the student or any information contained in those records.

(b) Confidential letters and statements of recommendations, which were placed in any student's record prior to January 1, 1975, and which are not used for purposes other than those for which they were specifically intended.

(c) Those records listed in §43.2(e) which are exempt from the definition of *student records.*

§43.7 Access rights.

The right of access specified in §43.5 shall include:

(a) The right to obtain a list of the types of student records which are maintained by the institution.

(b) The right to inspect and review the content of those records.

(c) The right to obtain copies of those records, the cost, if any, not to exceed the actual cost to the educational institution of reproducing the copies.

(d) The right to a response from the institution to reasonable requests for explanations and interpretations of those records.

(e) The right to an opportunity for a hearing to challenge the content of records.

(f) If any material or document in the record of a student includes information on more than one student, the right to inspect and review only that portion of such material or document as relates to that particular student or to be informed of the specific information contained in such part of such materials.

§ 43.8 Destruction of records.

This part does not prevent educational institutions from destroying any records, if not otherwise prevented by law. However, access shall be granted under § 43.5 before destroying student records where the parent or eligible student has requested access. Only records which are no longer relevant or necessary may be destroyed, subject to § 43.23(c).

§ 43.9 Procedures for granting access.

Each educational institution shall establish appropriate procedures for granting a request by parents for access to the records of their children, or by eligible students for access to their own records within a reasonable period of time. In no case shall access be withheld more than forty-five (45) days after the request has been made.

§ 43.10 Right to challenge.

Each educational institution shall give parents of students and eligible students, who are or have been in attendance at the institution, an opportunity to challenge the content of the student's records to:

(a) Insure that the records are not inaccurate, misleading, or otherwise violating the privacy or other rights of students.

(b) Provide an opportunity for correcting or deleting any inaccurate, misleading, or otherwise inappropriate data in the record.

(c) Insert into such records a written comment by the parents or eligible students pertaining to the content of such records.

§ 43.11 Informal proceedings.

Educational institutions may attempt to resolve differences with the parent of a student or the eligible student regarding the content of the student's records through informal meetings and discussions with the parent or eligible student.

§ 43.12 Right to a hearing.

Upon the request of the educational institution, the parent, or eligible student, a hearing shall be conducted under the procedures adopted and published by the institution. Such procedures shall include at least the following elements:

(a) The hearing shall be conducted and decided within a reasonable period of time following the request for the hearing.

(b) The hearing shall be informal and a verbatim record of proceedings will not be required. Interpreters will be utilized when necessary.

(c) The hearing shall be conducted by an institutional official or other party who does not have a direct interest in the outcome of the hearing.

(d) The parents or eligible student shall be given a full and fair opportunity to present evidence relevant to the issues raised under § 43.10.

(e) Within a reasonable period of time after the hearing ends, the hearing official shall make his recommendation in writing to the head of the educational institution. Within 20 days after receipt of the recommendation, the head of the institution shall issue his decision in writing to the parent or eligible student.

§ 43.13 Right of appeal.

If any parent or eligible student is adversely affected by the decision of the head of the institution, that party shall have appeal rights as given in 25 CFR part 2. However, each official decision shall be issued within 30 days from receipt of the appeal.

§ 43.14 Consent.

Educational institutions shall not permit access to or the release of student records or personally identifiable information contained in them, other than directory information of students, without the written consent of the parents or of an eligible student, to any party other than the following:

(a) Local school officials, including teachers within the educational institution, who have been determined by

the institution to have legitimate educational interests in the records.

(b) Officials of other schools or school systems at which a student is interested in enrolling. The student or parent must be notified of such release except in cases involving Bureau of Indian Affairs schools. All Bureau of Indian Affairs schools are considered to be components of one school system whether operated under contract or otherwise.

(c) Persons having official involvement with a student's application for or grant of financial aid.

(d) Parents of a dependent student as defined in section 152 of the Internal Revenue Code of 1954, as amended.

(e) Accreditation agencies in order to carry out their accrediting functions.

(f) U.S. Office of Education officials and other governmental education officials when deemed necessary by the institution to carry out their official functions.

(g) An education testing center or similar institution as a part of its validation research which has been authorized by the school.

(h) In an emergency, any person to whom the information is necessary in the discretion of the school's administration in order to protect the student's health and safety, subject to §43.17.

(i) Indian groups, contractors, grantees, professional social service organizations and personnel performing professional services, when necessary to carry out an official function authorized by the Bureau of Indian Affairs.

(j) Pursuant to the order of a court of competent jurisdiction; however, the parent or eligible student must be notified of such order in advance of compliance therewith by the educational institution.

§43.15 Content of consent.

The consent of a parent or eligible student requested under this part for the release of student records shall be in writing, signed and dated by the person giving the consent. The consent shall include:

(a) A specification of the records to be released.

(b) The reasons for release.

(c) The names of the parties to whom the records will be released.

§43.16 Copy to be provided to parents or eligible students.

Where the consent of a parent or eligible student is required under this part for the release of student records, a copy of the records to be released shall be provided on request to:

(a) The student's parents or the eligible student.

(b) The student who is not an eligible student, if desired by the parents.

§43.17 Release of information for health or safety emergencies.

(a) Educational institutions may release information from student records to appropriate persons in an emergency if the information is necessary to protect the health or safety of a student or other person. The factors to be used in determining whether records may be released under this section include the following:

(1) The seriousness of the threat to the health or safety of the student or other persons.

(2) The need for those records to meet the emergency.

(3) Whether the persons to whom the records are released are in a position to deal with the emergency.

(4) The extent to which time is of the essence in dealing with the emergency.

§43.18 Record of access.

(a) Each educational institution shall maintain a record kept with the student records of each student, which will indicate all parties other than those specified in §43.14 which have requested or obtained access to those records and which will indicate specifically the legitimate interest that each party had in obtaining this information.

(b) A record of access shall be available only to:

(1) Parents or eligible students.

(2) The school official and his or her assistants who are responsible for the custody of such records.

(3) Persons or organizations authorized in and under the conditions of §43.14.

§ 43.19 Transfer of information by third parties.

(a) Educational institutions shall not release personal information on a student except on the condition that the party to which the information is being transferred will not permit any other party to have access to the information without the written consent of the parents or of the eligible students.

(b) With any information released to a party under paragraph (a) of this section, educational institutions shall include a written statement which informs the party of the requirement in paragraph (a) of this section.

§ 43.20 Directory information.

(a) Any educational institution making public directory information shall make a reasonable effort to individually notify the parent or eligible student of the categories of information which it has designated as directory information. The institution shall allow a reasonable period of time after notice has been given for a parent or eligible student to inform the institution that any or all of the information designated should not be released without the prior consent of the parent or eligible student.

(b) Directory information may include the following: A student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student, tribe, agency, area, name of parent, sex, and classification (grade). No other information may be included. Educational institutions have the right to limit the content of directory information.

§ 43.21 Standards for collection and maintenance of student records.

(a) Records shall contain only information about an individual which is relevant and necessary to accomplish a purpose of the Bureau required to be accomplished by statute or Executive order of the President.

(b) Student records which are used in making any determination about any student shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the student in making the determination.

(c) Information which may be used in determining a student's rights, benefits, and privileges under Federal programs shall be collected directly from the student or his parents, to the greatest extent practicable. In deciding whether collection of information from a parent or eligible student, as opposed to a third-party source is practicable, the following factors among others may be considered:

(1) Whether the nature of the information sought is such that it can only be obtained from a third party.

(2) Whether the cost of collecting the information from the parent or student is unreasonable, when compared with the cost of collecting it from a third party.

(3) Whether there is a risk that information collected from third parties, if inaccurate, could result in an adverse determination to the student concerned.

(4) Whether the information, if supplied by the parent or student, would have to be verified by a third party.

(5) Whether provisions can be made for verification by the parent of student of information collected from third parties.

(d) Each individual parent or eligible student who is asked to supply information about himself which will be added to a system of student records shall be notified of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information. At a minimum, the notice to the parent or eligible student must state:

(1) The authority (whether granted by statute or Executive Order of the President) which authorizes requesting the information and whether disclosure of such information is mandatory or voluntary.

(2) The principle purpose or purposes for which the information is intended to be used.

(3) The routine uses which may be made of the information.

(4) The effects, if any, of not providing all or any part of the requested information.

(e) When information is collected on a standard form, the notice to the parent or eligible student shall be on the form or on a tear-off sheet attached to the form or on a separate sheet, whichever, is most practical.

(f) When information is collected by an interviewer, the interviewer shall provide the parent or eligible student with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests that a copy be mailed to him.

(g) A parent or eligible student may be asked to acknowledge, in writing, that he has been given the notice required by this section.

(h) No student records may be maintained describing how any individual exercises rights guaranteed by the first amendment to the Constitution unless:

(1) Expressly authorized by statute or by the individual about whom the student record is maintained; or

(2) Pertinent to and within the scope of an authorized law enforcement activity.

§43.22 Assuring integrity of records.

(a) Student records shall be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(b) When maintained in manual form, student records shall be maintained, at a minimum, subject to the following safeguards, or safeguards giving comparable protection:

(1) Areas in which the student records are maintained or regularly used shall be posted with an appropriate warning, stating that access to the records is limited to authorized persons. The warning shall also summarize the requirements of §43.23 and state that employees may be subject to a criminal penalty for the unauthorized disclosure of student records.

(2) During working hours, the area in which the student records are maintained or regularly used shall be occupied by authorized personnel, or access to the student records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During nonworking hours, access to the student records shall be restricted by their storage in locked metal file cabinets or a locked room.

(4) Where a locked room is the method of security provided for a system, the educational institution responsible for the system shall, no later than December 31, 1978, supplement that security by:

(i) Providing lockable file cabinets or containers for the student records, or

(ii) Changing the lock or locks for the room so that they may not be opened with a master key. For the purpose of this paragraph, a master is a key which may be used to open rooms other than the room containing student records, unless those rooms are used by officials or employees authorized to have access to the student records.

(c) When maintained in computerized form, student records shall be maintained, at a minimum, subject to safeguards based on those recommended in the National Bureau of Standards' booklet, ''Computer Security Guidelines for Implementing the Privacy Act of 1974'' (May 30, 1975), and any supplements to it, which are adequate and appropriate to assure the integrity of records in the system.

(d) The education institution responsible for a system of student records shall be responsible for assuring that specific procedures are developed to assure that the student records in the system for which it is responsible are maintained with security meeting the regulations in this section. These procedures shall be in writing and shall be posted or otherwise periodically brought to the attention of employees working with the student records contained in the system.

§ 43.23 Conduct of employees.

(a) Employees whose duties require handling of student records shall, at all times, take care to protect the integrity, security, and confidentiality of these records.

(b) No employee of the educational institution may disclose student records unless disclosure is permitted under § 43.14 or made to the parent of the student or eligible student to whom the record pertains.

(c) No employee of the educational institution may alter or destroy a student record, unless:

(1) Alteration or destruction is properly undertaken in the course of the employee's regular duties, or

(2) Alteration or destruction is required by an authorized administrative decision or the decision of a court of competent jurisdiction.

(d) The educational institution responsible for a system of student records shall be responsible for assuring that employees with access to the system are made aware of the requirements of this section.

PART 45—SPECIAL EDUCATION

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Subpart A—General

§ 45.1 General responsibility.

(a) Schools are responsible for providing a free appropriate education to all handicapped Indian children enrolled in a school operated or funded by the Bureau of Indian Affairs (BIA) who are between the ages of five (5) and twenty-one (21). Children whose fifth birthday occurs on or before December 31 or whose twenty-second birthday occurs during the course of the regular school year shall be regarded as eligible children for the entire school year.

(b) The BIA has the responsibility to ensure the provision of a free appropriate education until a handicapped child successfully completes a secondary school program, voluntarily withdraws or attains the age of twenty-two (22) years, regardless of whether the handicapped child is provided special education and related services:

(1) By a school directly;

(2) Through a contract entered into by the school with a public or private agency;

(3) By an educational cooperative of which the school is a member; or

(4) By an approved public or non-public school program (following placement or referral).

§ 45.2 Provision of early childhood special education programs and services.

(a) Children from birth to four (4) years of age, who are not enrolled in BIA funded or operated schools, may receive special education services through coordination with Head Start and other existing Early Childhood Special Education programs (ECSE).

(b) Early Childhood Special Education (ECSE) means specially designed special education and related services, to meet the unique needs of a child under the age of five (5) years whose handicap or impairment adversely affects the child's educational performance or learning abilities.

§ 45.3 Children of ages eighteen through twenty-one.

A child of ages eighteen (18) through twenty-one (21) shall be entitled to all of the rights given to children and parents by this part.

§ 45.4 Full educational opportunity.

A full educational opportunity must be provided to all handicapped children, ages five (5) through twenty-one (21) who are enrolled in schools operated or funded by the BIA.

§ 45.5 Definitions.

(a) *Agency* means an organizational unit of the Bureau which provides direct services to the governing body or bodies of one or more specified Indian tribes. The term includes Bureau Area Education offices only with respect to off-reservation boarding schools, cooperative schools, and tribally operated contract schools located in the Area for which the Director has not designated an Agency.

(b) *Agency Superintendent for Education* means the Bureau official in charge of Bureau education programs and functions in an Agency, and who reports to the Director, Office of Indian Education Programs (OIEP).

(c) *Approved public or non-public school* means:

(1) Either a public school operated by an intermediate educational unit, a local education agency or other public agency (as those terms are defined in 34 CFR 300.7, 300.8, 300.11) of a State which receives funds under part B of the Education of the Handicapped Act, as amended (20 U.S.C. 1411–1420) pursuant to a current annual program plan approved by the Secretary of Education; or

(2) A non-public school located in a State determined by the State educational agency to be in full compliance with all applicable State and Federal special education requirements.

(d) *Area Education Program Administrator* means the Bureau official in charge of Bureau Education programs and functions in a Bureau Area office and who reports to the Director.

(e) *Assistant Secretary* means the Assistant Secretary—Indian Affairs, Department of the Interior, or his/her designee.

(f) *Boarding school* means a Bureau school offering a residential center and support services as well as an academic program.

(g) *Bureau* means the Bureau of Indian Affairs of the Department of the Interior.

(h) *Child identification* means the identification, location, and individual evaluation of handicapped children.

(i) *Cooperative agreements* means an agreement between schools operated or funded by the BIA and state and local education agencies for the provision of special education and related services to handicapped children enrolled or eligible to be enrolled in the BIA school.

(j) *Counseling services* means services provided by qualified social workers (with training as counselors), psychologists, guidance counselors, or other qualified personnel.

(k) *Days* mean consecutive calendar days.

(l) *Director* means the Director, Office of Indian Education Programs.

(m) *The Division* means the Branch of Exceptional Education, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior.

(n) *EHA* means part B of the Education of the Handicapped Act as amended by the Education for All Handicapped Children Act of 1975 (Pub. L. 94–142), 20 U.S.C. 1411–1420, and the regulations issued by the U.S. Department of Education, 34 CFR 300.1.

(o) *Handicapped child* means a child evaluated in accordance with the requirements of this part who is determined to be mentally retarded, hard of hearing, deaf, deaf-blind, speech impaired, visually handicapped, seriously emotionally disturbed, multi-handicapped, orthopedically impaired, other health impaired or as having specific learning disabilities and who because of these impairments needs special education and related services. The terms used in this definition are defined as follows:

(1) *Deaf* means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) *Deaf-blind* means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(3) *Hard of hearing* means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of *deaf* in this section.

(4) *Mentally retarded* means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(5) *Multi-handicapped* means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc., but not including speech impaired), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

(6) *Orthopedically impaired* means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (*e.g.*, clubfoot, absence of member, etc.), impairments caused by disease (*e.g.*, poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(7) *Other health impaired* means (i) having an autistic condition which is manifested by severe communication

and other developmental and educational problems; or (ii) having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.

(8) *Seriously emotionally disturbed* is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance including:

(A) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes children who are schizophrenic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

(9) *Specific learning disability* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, or mental retardation, or emotional disturbance, or of environmental, cultural, or economic disadvantage.

(10) *Speech impaired* means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(11) *Visually handicapped* means a visual impairment which even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

(p) *Independent education evaluation* means an evaluation conducted by a qualified examiner who is not employed by the Agency responsible for the education of the child in question.

(q) *Individualized Education Program* (IEP) means the written individualized education for a handicapped child which is consistent with all the requirements of §§ 45.31—45.38 of this part.

(r) *Indian* means a person who is a member of an Indian tribe.

(s) *Indian Tribe* means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized by the Secretary as eligible for the special programs and services provided through the Bureau to Indians because of their status as Indians.

(t) *Individual Intelligent Quotient (IQ) test* means any individual test, device, or measure which purports to assess a child's current mental abilities, capacity, intellectual functioning, intellectual development or aptitude, but does not include achievement test or adaptive behavior scales.

(u) *In-service training* means training other than that received by an individual in a full-time program which leads to a degree.

(v) *Least restrictive environment* (LRE) means that to the maximum extent appropriate, handicapped children in public or private institutions or other care facilities, are educated with children who are not handicapped; and that special classes, separate schooling or other removal of handicapped children from the regular environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(w) *Native language* when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child. In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

(x) *Parent* means a parent, a guardian, or person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 45.56. The term *parent* is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

(y) *Parental consent* means: (1) that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (2) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and (3) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(z) *Parent counseling and training* means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(aa) *Physical education* means the development of physical and motor fitness; fundamental motor skills and patterns; skills in aquatics, dance, individual, and group games and sports. The term includes special physical education, adaptive physical education, movement education and motor development.

(bb) *Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(cc) *School* means educational or residential centers operated by or under contract with the Bureau of Indian Affairs offering services to Indian students under the authority of a local school board and the direction of the school supervisor. A school may be located on more than one physical site. The term *school*, unless otherwise specified, is meant to encompass day schools, boarding schools, cooperative schools, and contract schools as those terms are commonly used. The term *school* shall also encompass private schools, facilities, and institutions, with which the Bureau of Indian Affairs may contract for services to handicapped Indian children.

(dd) *Section 504* means section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

(ee) *Special education* means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(ff) *Special education coordinator* means the qualified employee of an Area/Agency responsible for ensuring that all requirements of this part are complied with by the schools within the jurisdiction of the Area/Agency.

(gg) *Supervisor* or *school supervisor* means the individual in the position of authority at any school.

(hh) *Tribally operated contract school* means a school (other than a public school) which is financially assisted under a contract with the Bureau.

(ii) *Vocational education* means organized educational programs which are directly related to the preparations of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

Subpart B—Identification and Evaluation of Handicapped Children

§45.11 Child find.

Each Agency must insure that every child within its jurisdiction between the ages of birth and twenty-two years who is suspected of being handicapped and in need of special education and related services is identified and located. A formal child find effort must be conducted at least once each school year and must include procedures to identify children:

(a) Enrolled in a regular education program operated by the schools of the Agency;

(b) Enrolled in a pre-school or day-care program on or near the reservation; or

(c) Currently out-of-school, including dropouts but excluding children who have graduated or otherwise successfully completed programs. Schools shall conduct child find activities for in-school identification as described in §45.12.

§45.12 Child find—elements.

Each Agency shall:

(a) Conduct a *formal community* survey through any effective method to identify children of all ages who may be in need of special education and related services.

(b) Regularly present or distribute child find information at tribal government or agency meetings, tribal fairs, chapter/district meetings, etc.

(c) Establish a system of in-school identification by which each local school supervisor or designee refers children whose academic performance, attendance, or other behavior indicates the possibility of a handicapping condition for an individual evaluation.

(d) Establish a procedure by which child identification data is regularly collected from the Indian Health Service, local Headstart programs, day care facilities, group homes, local public and non-public schools, the state education agency (of the state in which the Agency is located), tribal agencies and/or organizations and any other appropriate education, health, welfare or social service organization in the community served by the Agency. A formal procedure for the exchange of information between the State Organizational Unit conducting the ''Early Periodic Screening, Diagnosis and Treatment Program'' (mandated by title XIX of the Social Security Act) for the state in which the school is located and the Agency in which the school is located shall be established within 180 days from the effective date of this part.

(e) Publish public information articles and programs in local media, including announcements of times, dates, and places of free orientation workshops and free screening.

(f) Initiate annual community-wide communication to all parents of school age children which describes the special education program. Such communication shall emphasize the availability of programs and services for school age children.

§45.13 Register of children.

Each school shall maintain information on each handicapped child enrolled in the program. All information collected and maintained must be kept in accordance with the confidentiality requirements of Pub. L. 94–142 and the Privacy Act.

§45.14 General entry screening.

Each school shall participate in a screening program for all *newly* enrolled children and children who have not previously been screened in the school. Such screening shall be conducted by the school in order to identify those children who should be referred for a full individual evaluation. The general entry screening shall consist of the following elements, appropriately adapted for use with children of his/her particular age. This screening must be completed within thirty (30) days of the child's enrollment and include at a minimum:

(a) An appropriate vision screening;

(b) An appropriate hearing screening;

(c) A screening of the child's primary language skills;

(d) The administration by a classroom teacher of a general screening instrument (i.e., rating scale) to provide information regarding:

(1) Current academic performances,

(2) Social and emotional behavior,

(3) Gross motor skills,

(4) Fine motor skills,

(5) Any observable health problems, and

(6) The teachers impression of the need for additional assessment.

§ 45.15 Periodic school screening.

(a) At a minimum, schools must annually screen all students enrolled in odd numbered grades (i.e., first, third, fifth, seventh, ninth and eleventh grades) within the first thirty (30) days of enrollment.

(b) For schools using a non-graded system, the screening must occur every other year, beginning with the first level of enrollment at the school. The periodic school screening must meet the requirements set forth in § 45.14. Nothing in this part exempts newly enrolled students in even numbered grades, kindergarten, or pre-school from being screened as required in § 45.14.

§ 45.16 Screening personnel.

The school shall utilize personnel who are trained to do the specific screening which is being performed.

§ 45.17 Screening results and referrals.

The school supervisor or designee shall review all results obtained through the screening procedures indicated in §§ 45.14—45.15 with the classroom teacher as a team within ten (10) days of completion of this screening and determine if an individual evaluation is warranted.

(a) Upon the determination that an individual evaluation is needed, the school supervisor or designee shall within twenty (20) days complete the following:

(1) Inform the parents of the screening results and the recommendations of the team.

(2) Explain parental rights as required in § 45.51 to the parents.

(3) Obtain parental consent to perform an individual evaluation.

(4) When parental consent for an individual evaluation is obtained a formal referral must be prepared according to procedures established by the Agency Special Education Coordinator in consultation with the school supervisor. The referral shall be fowarded to the appropriate personnel for action.

(b) Should parental consent be denied, possible alternatives to formal evaluation such as modifications to the regular classroom program must be considered and discussed with the parent and classroom teacher prior to implementing due process procedures as provided in § 45.58. The discussion required in this part must be held within five (5) days of formal denial of consent and any modifications agreed upon must be implemented within thirty (30) days. If no agreement can be reached through these ''conciliation'' measures the due process procedures in § 45.58 should be considered.

(c) Nothing in this part is to be interpreted as prohibiting the child's parent, teacher or school administrator from referring a child for an individual evaluation should they feel that an evaluation is needed regardless of the screening cycle.

(d) Screening scales completed on children must be kept in the child's cumulative file until the succeeding scale is completed. If a child is placed in a Special Education Program, the screening results will then become a part of the child's handling file. The child, once placed, will become exempt from the screening procedures conducted thereafter.

§ 45.18 Individual evaluations.

(a) An individual evaluation must be conducted after receiving parental consent when:

(1) The child is referred based on the screening results, or

(2) Requested by the parent, teacher or administrator in writing.

(b) A student must be re-evaluated when:

(1) A disagreement occurs between the school and parent regarding a change of placement from one program to another (i.e., full-time special education to regular classroom, part-time special education to regular classroom, etc.),

(2) A change is proposed for the identification of a student's handicapping condition to a different condition (i.e., seriously emotionally disturbed to specific learning disabled, mentally retarded to specific learning disability, etc.),

(3) A child is currently enrolled in a special education program and the last evaluation was administered three years ago, or

(4) Requested by the parent.

§ 45.19 Evaluation procedures.

Procedures for selecting testing and evaluation materials and procedures developed for the purpose of evaluation and placement of handicapped children will not be racially or culturally discriminatory. Materials or procedures shall be provided and administered in the child's native (primary) language or mode of communication unless it is clearly not feasible to do so. No single procedure shall be the sole criterion for determining an appropriate educational program for a child. Assessment instruments should be selected on a child-by-child basis. Assessments must be reported in such a manner as to indicate present levels of the child's performance, to determine the need for special education and related services. Based on the individual needs of the child, additional specialized assessments may be required. Assessment reports should contain a summary of the diagnosis and specific educational recommendations for remediation. Assessment of a handicapped child will be multi-disciplinary, in order to provide a comprehensive view of the child from the perspective of the school, home, and community.

(a) For the purposes of non-discriminatory testing and evaluation practices, the following shall apply:

(1) Assessment instruments shall be appropriately adapted when used with children of impaired sensory, physical, or speaking skills and such adaptation shall consider each child's age and socio-economic and cultural background.

(2) Specialists implementing evaluation procedures must be familiar with local, cultural, language, and social patterns and practices.

(3) Interpretors, in the native language and/or sign language may be used throughout all phases of the evaluation.

(4) Communication with parents and the child shall be in the native language of the home (through the use of an interpretor) unless the English language is well understood by the parents, guardians, or child.

(5) Local community norms shall be considered when norm referenced tests are used.

(6) Criterion referenced instruments should be used.

(7) Developmental checklist(s) should be used where appropriate.

(8) Instruments shall be administered only by trained personnel and according to the producer's instructions.

(9) Instruments shall assess specific abilities, not merely produce a single IQ score.

(10) No one result shall determine placement.

(b) Assessment instruments should be adapted in accordance with the producers instructions to meet the individual needs of the child being evaluated. This requires that:

(1) Instruments be adapted according to age, socioeconomic, and cultural background of each child before or during a child's evaluation.

(2) Instruments be adapted for children with perceptual problems either before or during an evaluation.

(c) Evaluation shall be conducted in educationally related areas to verify a child's suspected need for special education. Evaluations shall be accomplished through coordination with the school supervisor and the Agency Special Education Coordinator when appropriate.

(d) An assessment by a psychologist shall be provided when appropriate to the child's needs. Such assessment may include:

(1) An individually appropriate psychological examination culminating in specific recommendations, based upon the child's developmental and social history.

(2) Observation of the child in familiar surroundings, such as a classroom or home.

(3) Inventory of sensory, motor, language, perceptual, attentional, cognitive, affective, attitudinal, self-image, interpersonal, behavioral, interest and vocational factors, in regard to the child's maturity, integrity and interaction with the educational and/or home context.

(e) An assessment by a nurse, social worker, or a counselor shall be provided when appropriate for the child. Such assessment of pertinent family history and home situation factors shall include:

(1) A description of pertinent family history and individual developmental history and estimates of adaptive behavior at home in the neighborhood and in local peer groups.

(2) Estimates of adaptive behavior shall be based to the greatest possible degree on information obtained by direct observation or interview of the child and/or parent in the neighborhood setting.

(f) Each qualified specialist providing an assessment component shall give the child a professionally sound, complete and suitable individualized examination or assessment in the context of the child's physical, developmental, social and educational history and current circumstances.

(g) Individual evaluations shall be conducted on a child unless there are written and documented reasons determined on an individual basis, for waiving evaluations. Acceptable reasons may include but are not limited to circumstances where:

(1) The parents refuse to permit an evaluation.

(2) The parents arrange for an equivalent evaluation of their child by a qualified professional.

(3) An equivalent evaluation has been completed within the past three (3) years.

§ 45.20 Individual evaluation objectives.

The objectives of an individual evaluation are to:

(a) Determine where a child is handicapped;

(b) Diagnose and evaluate the nature and extent of the effect of such impairment or condition on the educational performance of the child; and

(c) Assess the need for special education and related services and to recommend intervention strategies.

§ 45.21 Formation of multi-disciplinary evaluation teams.

(a) The school supervisor will be responsible for the overall conduct of the individual evaluation and shall collect and review all pertinent information regarding the child to be evaluated.

(b) The Special Education Coordinator shall coordinate through the school supervisor, the selection of a multi-disciplinary evaluation team for the conduct of the evaluation.

§ 45.22 Composition of multi-disciplinary evaluation teams.

The multi-disciplinary evaluation team shall be composed of qualified persons appropriate to complete an assessment of the suspected disability. In all cases the classroom teacher (or other instructional staff member) familiar with the child and a person knowledgeable with respect to the suspected disability must be included on the team.

§ 45.23 Content of individual evaluations.

Each individual evaluation must include:

(a) An assessment of the child's educational status which includes:

(1) A history of the child's prior evaluations.

(2) A statement of the child's attendance pattern to include schools attended and average daily attendance in prior years.

(3) An educational history including:

(i) The child's academic grades.

(ii) The child's achievement and aptitude test scores and a statement of the child's current academic standing or school readiness.

(iii) Previous educational strategies used to remediate the child's educational need.

(iv) A statement of the child's social relations with groups, peers, and adults based on classroom and teacher observations.

(v) A description of the child's academic strengths that promote learning.

(vi) A description of the child's physical limitations and behavior that inhibit learning.

(vii) A statement of the child's attentional capacity and communication skills.

(b) A health assessment which includes:

(1) Present and past medical review.

(2) Physical examination.

(3) Current existing medical conditions and prescribed treatment(s).

(c) An assessment by a psychologist, including an individual psychological examination culminating in specific recommendations, as contained in §45.19.

(d) Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist will:

(1) Evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and

(2) Where necessary, make referrals for additional assessments needed to make an appropriate placement decision. For example, if a child is suspected of being seriously emotionally disturbed, the child should be evaluated by either a clinical psychologist or a psychiatrist.

§45.24 Test administration.

Agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child;

(e) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(f) Tests, to the greatest extent possible, are free from racial, cultural and sexual bias; and

(g) Determinations of mental retardation are based on an assessment of a variety of factors including adaptive behavior and past and current development activities (e.g., indices or manifestations of social, intellectual, adaptive, verbal, motor, language, emotional and self-care development for age).

§45.25 Location of evaluation.

(a) The evaluation shall take place in the school or at another facility which is jointly approved by the child's parents and school officials.

(b) When a child has been referred for an evaluation and, at the time of such referral, such child is in a hospital or is otherwise living away from home, the Agency shall make appropriate arrangements for the provision of the evaluation.

§45.26 Multi-disciplinary evaluation team procedures.

(a) Each individual evaluation must be completed, with full attention to its comprehensiveness and thoroughness, within thirty days from the date of written parental consent. An extension of time of thirty additional days may be approved in writing by the Agency Superintendent for Education after written documentation by the school that unusual circumstances exist preventing completion of the individual evaluation in the specified time. No more than one extension may be approved in connection with a single individual evaluation unless approved in writing by the Director, or designee.

(b) The comprehensive assessment must reflect a compilation of information drawn from different assessment

sources. The depth of the assessment in each area will vary based on the initial review of screening information conducted by the school supervisor.

(c) The Special Education Coordinator is responsible for ensuring that full and complete records of information collected or generated in connection with an individual evaluation are maintained. A report setting forth a full written explanation of the findings and the recommendations made by the multi-disciplinary evaluation team must be prepared. The report must include:

(1) A description of the child's present level of functioning;

(2) A description of the needs of the child in rank order of importance;

(3) A recommendation of the types of services which should be provided for each listed need;

(4) A written summary of the procedures employed, the results, and the diagnostic impression;

(5) A proposed date for the review of the child's progress prior to the review required in § 45.38, if such assessment so indicates; and

(6) Criteria by which at that time, the effectiveness of the child's program may be determined.

(d) Each member of the multi-disciplinary evaluation team shall certify in writing whether the report prepared by the team reflects his or her conclusions, and if not, shall submit a separate statement presenting his or her conclusions. The report must be prepared no later than fifteen (15) days after completion of the evaluation.

(e) Members of the multi-disciplinary evaluation teams must be responsible for all aspects of the individual evaluation including: the selection; administration and interpretation of evaluation materials; the collection of all appropriate social and cultural background and adaptive behavior information related to each evaluation; and the confidentiality of information collected during the individual evaluation.

§ 45.27 Emergency evaluation and placement.

(a) Where a child demonstrates documented instances of dangerously assaultive or self-abusive behavior, the school supervisor may approve a temporary change in placement (i.e., to a special education setting other than the regular classroom) on an emergency basis. The school supervisor shall immediately notify the Special Education Coordinator of the placement. The Agency shall no later than the following day determine the appropriateness of the placement and initiate the evaluation process.

(b) The parent shall be informed immediately of the child's behavior and shall participate (if possible within the constraints of time) in the emergency placement decision and consent for evaluation will be obtained.

(c) An individual evaluation must be completed within fifteen days of the emergency placement. Procedures as outlined in § 45.23 must be followed. A final placement determination, made by the IEP committee, must be made within five (5) days following completion of the individual evaluation.

§ 45.28 Independent educational evaluation.

(a) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section. Each school/Agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(b) A parent has the right to an independent education evaluation at public expense if the parent disagrees with an evaluation obtained by the school or Agency. However, the school or Agency may initiate a hearing in accordance with the procedures of this part to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at school expense.

(c) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Must be considered by the school in any decision made with respect to the provision of a free appropriate public education to the child; and

(2) May be presented as evidence at a hearing regarding that child.

(d) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at school or Agency expense.

(e) Whenever an independent evaluation is at school or Agency expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the school or Agency uses when it initiates an evaluation.

§45.29 Additional procedures for evaluating specific learning disabilities.

(a) In evaluating a child suspected of having a specific learning disability, in addition to the requirements of §45.22, each Agency shall include on the multi-disciplinary evaluation team:

(1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified to teach a child of his or her age; and

(4) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(b) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting. (In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.)

(c) The team may determine that a child has a specific learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (c)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(i) Oral expression;

(ii) Listening comprehension;

(iii) Written expression;

(iv) Basic reading skill;

(v) Reading comprehension;

(vi) Mathematics calculation; or

(vii) Mathematics reasoning.

(d) The multi-disciplinary team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

(1) A visual, hearing, or motor handicap;

(2) Mental retardation;

(3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

(e) The multi-disciplinary team shall prepare a written report of the results of the evaluation. The report must include a statement of:

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(f) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions. The report must be prepared no later than fifteen (15) days after completion of the evaluation.

Subpart C—Provision of Special Education and Related Services

§45.30 Free appropriate public education.

(a) Each BIA funded or operated school must ensure that a free appropriate public education is provided to every handicapped Indian child enrolled in the school between the ages of five (5) and twenty-one (21) years.

(b) An appropriate education is one which meets the needs of a handicapped child as set forth in the individual education program in the least restrictive educational setting. An appropriate education involves the provision of regular education, special education and related aids or services and may include pre-school, elementary school, or secondary school education.

(c) The provision of a free education is the provision of educational and related services without cost to the child (or parents), *except* for those fees that are imposed on a non-handicapped child, and may consist of the provision of free services or the payment of the costs of the program. Transportation must be provided in order to assure access of persons to services.

§ 45.31 Individualized education program (IEP).

If, as a result of the determination of a multi-disciplinary team, a child is diagnosed as being handicapped and in need of special education and related services, schools are required to develop an IEP within thirty (30) days from the date of receipt of the written individual evaluation report. The IEP shall set forth the approach which will be taken to ensure that the child will be provided a free, appropriate education.

§ 45.32 Content of individualized education program (IEP).

At a minimum, the IEP must contain:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular education programs;

(d) The projected dates for initiation of services and the anticipated duration of the services;

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved;

(f) A description of the nature and duration of physical education services to be provided to the child; and

(g) A statement that all services recommended by the multi-disciplinary team are being provided, or if all recommended services are not provided, a justification for the exclusion of the services.

§ 45.33 Individualized education program (IEP) development.

(a) Overall responsibility for the development of each IEP rests with the school supervisor.

(b) The IEP shall be developed by a committee which shall hold at least one meeting and includes among its members the following:

(1) The School Supervisor, or designee (who shall chair the committee) other than the child's teacher, who is qualified to provide or supervise the provision of special education;

(2) The child's teacher and/or other relevant instructional staff;

(3) One or both of the child's parents;

(4) The child, where appropriate; and

(5) Other individuals at the discretion of the parent, Agency, or school.

(c) For a handicapped child who has been evaluated for the first time, the Agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the school, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(d) Upon receiving written application from the school, the Agency Superintendent for Education may allow the school to postpone the development of an initial IEP to the beginning of a new school year, if the written evaluation report is completed within fifteen (15) days of the end of the current school year and, if the Agency Superintendent for Education determines that an IEP need not be implemented during the summer.

(e) Schools must prepare a progress report related to the instructional objectives specified in the IEP for each handicapped child and must include it with, or in lieu of the grading report

prepared by the school for all elementary and secondary students.

§45.34 Placement recommendation in the IEP.

(a) Placement recommendations shall be made by the School Supervisor or designee in concert with the IEP committee and shall be incorporated in the IEP.

(b) The appropriate placement must be selected from the following:

(1) The regular classroom;

(2) The regular classroom with consultation;

(3) The regular classroom with resource teacher;

(4) The regular classroom with itinerant resource teacher;

(5) The regular classroom in conjunction with a resource room;

(6) A self-contained special classroom with part-time instruction in regular class;

(7) A self-contained special class (regular campus);

(8) A self-contained special class in a special day facility;

(9) Homebound instruction; and

(10) Instruction in hospitals and residential facilities.

(c) Schools may not decline to propose placement for a child or recommend to parents that a child be enrolled ''voluntarily'' in a non-BIA operated/funded school program. In selecting from the continuum of alternative settings, no handicapped child may be proposed for placement in any alternative settings unless it can be demonstrated that the nature or severity of the child's disability is such that education in regular class (in the school the child attends if not handicapped) with the use of supplementary aids and services cannot be achieved satisfactorily. Each school must insure that a continuum of alternative placements which meets the particular needs of each enrolled handicapped child is available.

(d) Placement of a handicapped child in a boarding school operated by the Bureau which concurrently enrolls non-handicapped children of the same age and grade shall be considered a placement in a regular school campus.

(e) Alternative placements may be provided directly by the school, or through cooperative arrangements with local and state education agencies or, except as provided in paragraph (h) of this section, through contractual arrangements with approved non-public schools, agencies or institutions.

(f) Alternative (9), homebound instruction may be selected only when the handicapped child:

(1) Currently possesses a physical impairment or illness which directly (or because of treatment required) precludes the movement of the child from a hospital or home environment to the general education environment; or

(2) Has been determined (after an individual evaluation) to require a program of continuous mental health care and treatment which would be seriously disrupted by movement to the general educational environment. The proposed homebound instruction should permit the return of the child to the general education environment at a specified date. The Agency Superintendent for Education must be immediately notified in writing of each homebound placement made by the school.

(g) Alternative placement (10) may be selected only when the health or safety of the child precludes the child's attendance at a nearby school for special education services.

(h) Alternative placements (1) through (8) may not be provided through contractual arrangements with approved non-BIA operated/funded schools, Agencies or institutions if there are a sufficient number of handicapped children with similar educational needs who live within the attendance area served by the school to justify the allocation of one teacher.

(i) Handicapped individuals who do not meet the age requirements of the Bureau may be served by the local school, provided they are not counted for ISEP formula funding, with the approval of the local school board and the Agency Superintendent for Education, and so long as such placement does not dilute the quality and/or quantity of services provided to eligible handicapped students.

(j) If the multi-disciplinary team determines that a residential placement for a child is appropriate they should notify the Agency Special Education

Coordinator in writing. Upon receipt of such notice, the Special Education Coordinator, with the approval of the Agency Superintendent for Education, will consult with the Education Specialist for institutional placement to determine that the placement is in compliance with Federal laws regarding the education of handicapped children.

§ 45.35 Approval of IEP and placement recommendation.

(a) The school must attempt to schedule a meeting which includes the school supervisor or designee, the child's parent(s), and the receiving teacher and others as identified in § 45.33.

(b) The parent(s) of the child must be provided full and effective written notice of the meeting and all reasonable efforts must be made by the school supervisor to ensure parental participation. The written notice to parents shall also contain the following information:

(1) A statement that the evaluation has been completed and that the parents have the right to meet with the School Supervisor, the Special Education Coordinator or any member of the IEP committee to discuss and plan the IEP.

(2) A statement that all papers relevant to the evaluation, including the actual written assessments, are available for inspection by the parents or a designated representative of the parents;

(3) A statement that the parent has a right to an independent evaluation as provided in § 45.28;

(4) A statement of the parent's options under paragraph (c) of this section and a form for indicating the option selected by the parent; and

(5) A statement explaining the consequences of the parent's rejection of the proposed IEP under the due process procedures established by § 45.58.

(c) The parent of a child, upon receipt of full and effective notice, may exercise any of the following options (by giving written notice to the school):

(1) To accept or reject a written evaluation finding that the child does not need special education;

(2) To accept or reject the IEP. A parent may accept an IEP in whole or in part and the school shall immediately implement the mutually accepted elements of the IEP;

(3) To accept a modified IEP that has been mutually agreed upon with the School Supervisor or designee following the meeting described in paragraph (a) of this section; or

(4) To postpone a decision on the IEP until the completion of an independent evaluation; and

(5) To obtain an independent evaluation of their child.

(d) This meeting may be the first and only full meeting of the IEP committee. The meeting must include a thorough discussion of the results of the child's individual evaluation, the child's proposed IEP and the child's proposed educational placement. The school supervisor or designee should take whatever action is necessary to insure that the parents understand the proposed IEP and the proposed educational placement before requesting consent for placement. At the close of the final meeting, each member of the committee shall sign the completed IEP to signify their participation and agreement with the educational plan.

§ 45.36 Parent participation.

(a) Each school shall take steps to encourage that one or both of the parents of the handicapped child are present at each meeting including:

(1) Try to schedule the meeting at a mutually agreed upon time and place.

(2) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend.

(b) The notice under paragraph (a)(2) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the school shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the school is unable to convince the parents that they should attend. In this case the school must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The school shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The school shall give the parent a copy of the IEP.

§45.37 IEP implementation and placement.

(a) For newly identified children, the IEP must be implemented and educational placement must be made:

(1) Within thirty (30) days after the written parental approval of the placement has been received; or

(2) In cases involving due process, placement will be made within thirty (30) days of the final written decision of the hearing officer, unless an appeal is filed by the aggrieved party.

(b) If the school cannot, within thirty (30) days, provide any or all of the services called for in the IEP the School Supervisor must consult the Agency Superintendent for Education on alternate means of providing the services to fully implement the IEP. The Agency Superintendent for Education must make provision for the service within fourteen (14) days of the consultation.

§45.38 IEP revision, review of placement.

Consistent with the requirements of §45.37, the IEP must be reviewed and updated annually. The review and revision of the IEP must be completed no later than the first day of school of the next full term. Whenever possible, the review shall be scheduled near the time that there may be a change in the personnel providing the major services to the child under the IEP, as when the child is to move from one grade or school to another. The review shall be conducted as follows:

(a) The school supervisor, the parents, and the person(s) providing the major services to the child under the IEP shall meet and make a careful review of the child's progress based upon the progress reports submitted by the school during the grading period, and the observations of those working with the child.

(b) The School Supervisor shall invite (in writing) the child's parents and, where appropriate, the child, to attend and participate in the review meeting. The School Supervisor or the parents may, at their discretion, invite other person(s) who have worked with, are working with, or will be working with the child to attend the review meeting.

(c) The participants in the review meeting shall determine:

(1) Whether the child has achieved the goals set forth in the IEP;

(2) Whether the child has met the criteria which indicate readiness to enter a less restrictive program;

(3) Whether the program the child is in should be specifically modified to make it more suitable to the child's needs; and

(4) Whether it is desirable to refer the child for an individual re-evaluation.

(d) The participants in the review meeting shall review the current IEP and revise it as appropriate in accordance with §45.34. If a re-evaluation of the child is scheduled in accordance with §45.39, the revision of the new IEP shall be deferred until completion of the re-evaluation. If the parent is unable to attend the review meeting, the school shall provide the parent with copies of all relevant documents within five (5) days after the review meeting has been completed.

(e) During the annual review, the description of current educational performance in the IEP must be updated and the overall educational needs, long-term educational goals, short-term objectives, and related services modifications made. Schools are required to rewrite sections of the IEP only to the extent necessary to update or modify the plan.

§45.39 Re-evaluation.

Parental approval is not required for the conduct of a re-evaluation if the

child has been initially placed and his/her individualized education program has been reviewed following the requirements of this part. Notice of the conduct of the re-evaluation must be provided to the parent prior to re-evaluation. A written summary of the re-evaluation must be provided to the parents within five (5) days of the scheduled review meeting. A child *must* be re-evaluated at least every three (3) years.

§ 45.40 Extended school year services.

(a) The IEP may provide for continuous instruction (uninterrupted by the regular summer recess) whenever:

(1) Continuous instruction is likely to be necessary in order to sustain, with only minor regression, current important educational skills and information retention; or

(2) The child lives in a residential facility or institution.

(b) The extension of an IEP for a ten (10) to twelve (12) month instructional program shall not result in a more restrictive change in placement on the continuum of alternative placements nor shall it constitute a basis for any deviation from any other educational placement requirement of § 45.34 of this part. However, the increased isolation of handicapped children which could result from the operation of an instructional program for handicapped children during a period of time when non-handicapped children are not attending school would not violate any requirements of this part.

§ 45.41 Outcome goals.

IEP's for children over the age of fifteen (15) years may contain, as appropriate, either a description of regular and/or special education instructional services leading to the attainment of a regular high school diploma before the age of twenty-two *or* a program of regular or special vocational education leading to participation in a work-experience (or sheltered employment) program and the attainment of an appropriate level of vocational proficiency to permit, whenever possible, the child's entry into competitive employment upon or before reaching the age of twenty-two.

§ 45.42 Related services.

The school must ensure that each handicapped child has developmental, corrective and other supportive services (to the maximum extent feasible) to benefit from special education.

§ 45.43 Non-academic and extra-curricular services.

(a) Non-academic and extracurricular services and activities must be offered in a way which allows equal opportunity for handicapped children to participate in services and activities.

(b) Non-academic and extracurricular services, meals and recess periods must be provided in the most integrated setting appropriate to the needs of the child.

§ 45.44 Physical education and athletics.

(a) Handicapped children must be provided an equal opportunity for participation in physical education courses and inter-scholastic, club or intramural athletics sponsored by the school.

(b) Physical education services must be provided to handicapped children in the regular physical education program and may not be different from those provided other children, unless:

(1) The child is enrolled full time in a separate facility or needs specially designed physical education; and

(2) A separate physical education setting is the least restrictive environment.

§ 45.45 Expulsion/suspension.

A handicapped child may not be expelled or suspended from school if the behavior for which action is being taken is related to the child's disability. If the child's behavior is so disruptive that the education of others is impaired, a review of the child's IEP and placement as described in § 45.38 of this part must be undertaken in order to meet the needs of the child.

§ 45.46 Geographic accessibility.

Consistent with the requirements of the IEP, the educational placement of a child must be as close to the child's home as possible. The placement of a handicapped child in an off-reservation

boarding school operated by the Bureau *shall not* be regarded as inconsistent with this requirement to the extent that similarly situated non-handicapped students are also placed in such a school.

§45.47 Architectural barriers and program accessibility.

(a) Facilities used by schools, directly, or through contractual arrangement, must be accessible to and usable by handicapped children. The accessibility standards of the American National Standards Institute (ANSI A117.1–1961 (R 1971)) shall be followed. Schools located in isolated locations may make application to the Director for an annual waiver of any standard. Such a request must be based on documented inability to meet the standards. In no event may architectural barriers prevent a handicapped child from being educated in the least restrictive educational environment as defined in §45.34.

(b) Program accessibility (*i.e.,* where each program or activity, when viewed in its entirety, is readily accessible to handicapped children) must be ensured in all existing facilities.

(c) Program accessibility may be accomplished through the following methods:

(1) Redesign of equipment;

(2) Reassignment of classes or other services to accessible building;

(3) Assignment of aides to children;

(4) Home visits;

(5) Alteration of existing facilities; or

(6) Other methods.

(d) The method for accomplishing program accessibility which offers programs and activities to children in the least restrictive environment.

§45.48 Handicapped children in private schools placed or referred by agencies.

Requirements of this section apply to handicapped children who are or have been placed in or referred to a private school or facility by an Agency as a means of providing special education and related services.

(a) Each Agency shall insure that a handicapped child who is placed in or referred to a private school or facility is:

(1) Provided special education and related services in conformance with an IEP which meets the requirements under §§45.30—45.38 at no cost to the parents; and

(2) At a school or facility which meets the standards that apply to the Agencies (including the requirements in this part).

(b) In implementing the requirements of this part the Agency shall:

(1) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(2) Disseminate copies of applicable standards to each private school and facility to which an Agency has referred or placed a handicapped child;

(3) Provide an opportunity for those private schools and facilities to participate in the development and revision of BIA standards which apply to them; and

(c) Assure that handicapped children have all of the rights of a non-handicapped child.

§45.49 Handicapped children in private schools placed by parents.

(a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the Agency is not required by this part to pay for the child's education at the private school or facility.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under §§45.57 through 45.63.

Subpart D—Procedural Safeguards

§45.51 Notice to parents.

(a) Written notice must be given to the parents of a handicapped child a reasonable time before the school:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the

provision of a free appropriate public education to the child.

(b) The notice described under paragraph (a) of this section must include:

(1) A full explanation of all the procedural safeguards available to the parents including confidentiality requirements;

(2) A description of the proposed (or refused) action, explaining the reasons for such action and describing any options which were considered and rejected;

(3) A description of each evaluation procedure, test, record or report used as a basis for the action and any other relevant factors;

(4) The name(s) of the employee(s) of the school who may be contacted for further information;

(5) Language understandable to the general public, provided in the language of the parent or other mode of communication used by the parent(s) unless clearly not feasible.

(c) The notice must be communicated orally (where necessary) in the primary language or other mode of communication to insure that the parent understands the content.

(d) If an interpreter is used as part of the procedure for providing full and effective notice, the school must maintain a written statement, signed by the interpreter, to the effect that the parent understood the content of the matter presented.

§ 45.52 Parental consent.

(a) Parental consent must be obtained before:

(1) Conducting a preplacement evaluation; and

(2) Initial placement of a handicapped child in a program providing special education and related services.

(b) Parental consent must also be obtained before personally identifiable information is:

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information consistant with the dislosure provisions of the Privacy Act of 1974, as amended;

(2) Used for any purpose other than meeting a requirement under this part; or

(3) Used for purposes other than those previously specified to the parent.

§ 45.53 Rights of handicapped children.

Handicapped children shall have the right to:

(a) Non-discrimination on the basis of being handicapped;

(b) A free appropriate education;

(c) An independent educational evaluation as provided in this part, and careful consideration of the results of an independent evaluation with respect to the provision of a free appropriate education;

(d) Be accompanied and represented by persons of his/her choice at any meeting or conference required or permitted by this part;

(e) Inspect and review all relevant records with respect to the identification, evaluation and placement of the child and the provisions of a free appropriate education;

(f) A hearing on any action for which notice is required with opportunity for direct participation, representation by counsel, and other procedural rights;

(g) Appeal to the Agency Superintendent for Education, or the Area Education Program Administrator, as appropriate, and to the Director relating to identification, evaluation or placement or to the provision of a free, appropriate education;

(h) A surrogate parent, when appropriate;

(i) A copy of the full written explanation and findings of the individual evaluation as soon as it is completed together with a full oral explanation (effectively communicated) of both the findings and the recommendations;

(j) A personal consultation with the members of the multi-disciplinary team;

(k) Full and effective notice of proposed actions as provided in this part;

(l) Parental approval or disapproval as provided in this part; and

(m) Information concerning any free or low-cost legal and other relevant services available upon request or if a hearing is initiated.

§45.54 Access rights.

(a) Each school and Agency must permit parents to inspect and review any records directly relating to their children which are collected and maintained by them or by a party acting for the school.

(b) A parental request to inspect and review records must be honored without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of the child, and in no case more than fourteen (14) days after the request has been made. The right to inspect and review educational records under this section includes:

(1) The right to a response to reasonable requests for explanations and interpretations of the records;

(2) The right to request that copies of the records containing the information be provided at no cost to the parents;

(3) The right to have a representative of the parent (authorized in writing) inspect and review the records.

(4) The right to place a statement in the records a school maintains on a child. Such statement may comment on any information or set forth any reason for disagreeing with the decisions of the Agency. Any explanation placed in the records must be maintained by the Agency. If the contested portion of the record is disclosed to any party, the parent's explanation must also be disclosed.

(c) The parent shall be presumed to have authority to inspect and review records relating to his or her child *unless* the school has been advised, in writing, that the parent does not have the authority under applicable tribal or state law governing such matters as guardianship, separation, and divorce.

(d) A record of parties obtaining access to education records (except access by parents and authorized employees of the school) must be kept and must include the name of the party, and the date access took place.

(e) Parents, upon request, shall be provided with a list of the types and the purpose of the authorized use of education records of their child.

(f) If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(g) A parent who believes that information in the education records is inaccurate or misleading or violates the privacy or other rights of the child, may request that the information be amended. The school or Agency must decide whether to amend the information as requested within fourteen (14) days of receipt of request. If the school or Agency decides to refuse to amend the information, it must inform the parent of the refusal and advise the parent of the right to a hearing.

§45.55 Confidentiality of information.

(a) The confidentiality of personally identifiable information must be protected at collection, storage, disclosure, and destruction stages.

(b) *One person* designated by the school must assume responsibility for insuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the policies and procedures set forth in this subpart.

(d) Schools must maintain, for public inspection, a current listing of the names and positions of the employees who may have access to personally identifiable information.

(e) Schools must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

§45.56 Surrogate parents.

(a) After documented, repeated and reasonable efforts to identify and locate a parent of a handicapped child, or of a child suspected of being a handicapped child, or whenever a child is a ward of a court, the School Supervisor must institute a proceeding before an appropriate tribunal to determine the

need for a surrogate parent and, if need is found, for the appointment of a surrogate parent.

(b) The person appointed as a surrogate parent shall:

(1) Have no interest that conflicts with the interests of the child and shall not be a present employee of the school involved in the education or care of the child or a present employee of Office of Indian Education Programs;

(2) Have knowledge and skills that insure adequate representation of the child; and

(3) Wherever possible, be a member of the child's extended family, or if that is not possible, a member of the same tribe as the child.

(c) The surrogate parent shall represent the child in all matters relating to the identification, individual evaluation and educational placement of the child and the provision of a free appropriate public education.

(d) Surrogate parents may not be appointed for the sale purpose of representing parents at the IEP conference.

(e) Payment of fees for service as a surrogate parent does not, in and of itself, render a person an employee of the BIA.

§ 45.57 Conciliation/mediation.

(a) The school must make all reasonable efforts consistent with its obligations under this part, to resolve informally any ongoing disputes between the parent and the school.

(b) Prior to the initiation of a due process hearing, the Bureau shall attempt to intervene with the mediation process. The following is a statement which describes this technique.

(1) Mediation is a dispute resolution process which is non-adversarial in nature. It seeks not to declare winners or losers, but to find reconciliation between disputing parties. This process is conducted through the skills of a trained mediator. Its focus is the mutually satisfactory resolution of disputes. No third party acts as judge or jury. The parties themselves arrive at an assessment through the process. Mediation can be initiated by either a parent or the Bureau in order to resolve informally a disagreement with respect to the identification, evaluation, or educational placement of, or the free appropriate education provided to an Indian child. Mediation shall consist of, but not be limited to, an informal discussion of the differences between the parties in an effort to resolve those differences. The parents and the appropriate school officials may attend mediation sessions between the parties in an effort to resolve those differences.

(2) Mediation must be conducted, attempted, or refused in writing by concerned parties of the handicapped child whose education is at issue before a request for, or initiation of, a hearing authorized by this part. Any request by the Bureau for a hearing shall state in writing how this requirement has been satisfied. No stigma may be attached to the refusal of the concerned parties to mediate or to an unsuccessful attempt to mediate. Mediation may not be used to deny or delay a parent's right to impartial due process hearing.

§ 45.58 Initiation of hearings.

(a) If the parent disagrees with any action taken by a school for which full and effective notice to parents is required by this part, a hearing may be initiated by the parent of a handicapped child or a child suspected of being a handicapped child, by sending a written request for hearing to the Agency Superintendent for Education. The Agency Superintendent for Education must acknowledge receipt of the written request within five (5) days of actual receipt.

(b) Hearings may be initiated by a school by providing full and effective notice to parents in any instance where, after reasonable efforts at conciliation, a parent either fails to provide written approval of a proposed action, or provides a formal disapproval.

(c) Whenever a hearing is initiated, full and effective notice of the initiation of the hearing must be provided by the hearing officer to all persons concerned.

(d) The written notice of hearing shall include:

(1) A statement of the date, time, place and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes or regulations involved; and

(4) A short and plain statement of matters asserted.

§45.59 Hearing officers.

(a) A proposed hearing officer must be selected by the Agency Superintendent for Education within one (1) day of receipt of a request for a hearing, from a list established and maintained by the Agency.

(b) After selecting a proposed hearing officer, the Agency Superintendent for Education must, within three (3) days, give the parent(s) and the school full and effective notice of the name of the proposed hearing officer.

(c) The parent and school, each upon notice of the selection of proposed hearing officer, may request that the Agency/Area determine that the person so proposed is not impartial and may exercise one automatic disqualification during the appointment process. The Director shall resolve all challenges for cause (i.e., partiality).

(d) If the proposed hearing officer is automatically disqualified or found to be not impartial by the Director, the Agency Superintendent for Education must within three (3) days designate another person.

(e) Final appointment of a hearing officer occurs whenever a proposed hearing officer is selected by the Agency Superintendent for Education and the parent or the school fails to notify the Agency Superintendent for Education of a decision to challenge the impartiality of the proposed hearing officer or of a decision to automatically disqualify the proposed hearing officer (available only once for each party), or when the Director determines that no doubt exists as to the impartiality of a proposed hearing officer.

§45.60 Impartial hearing officer.

(a) A hearing may not be conducted:

(1) By a person who is an employee of a school, or of the BIA, who is involved in the education or care of the child, or

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the Agency solely because he or she is paid by the Agency to serve as a hearing officer.

§45.61 Hearing reports.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children. The cost for such counsel or expert representatives shall be borne by the party employing them;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing; and

(5) Obtain written findings of fact and decisions.

(b) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

§45.62 Timelines and convenience of hearings and reviews.

(a) The Agency shall ensure that a final decision is reached by the hearing officer and a copy of the decision is mailed to each of the parties within 45 days after receipt of a request for a hearing.

(b) A copy of the decision made in a review conducted by the Assistant Secretary—Indian Affairs must be mailed to each of the parties within 30 days of the request for a review.

(c) The hearing or reviewing officer may grant specific extensions of time at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.

§ 45.63 Administrative appeal: impartial review.

(a) A decision made in a hearing conducted under this subpart is final, unless a party to the hearing appeals the hearing decision.

(b) A party aggrieved by the findings and decision in the hearing may, within ten (10) days of the decision, appeal to the Assistant Secretary—Indian Affairs who may designate an official to conduct the review.

(c) The Official conducting the review shall:

(1) Examine the entire hearing record;

(2) Insure that the procedures at the hearing more consistent with the requirements of due process;

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 45.62 apply;

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Make an independent decision on completion of the review; and

(6) Provide written findings and the decision to the parties.

(d) The Department of the Interior considers the decision made by the reviewing official as final.

Subpart E—Personnel

§ 45.65 In-service training.

(a) Each Agency must provide a written plan which insures that ongoing in-service training programs are made available to all personnel who are engaged in the education of handicapped children. To avoid duplication, Agencies and schools must jointly determine training needs.

(b) Each plan must:

(1) Describe the process used in determining the in-service training needs of personnel engaged in the education of handicapped children;

(2) Identify the areas in which training is needed (i.e. individualized education programs, non-discriminatory assessment, least restrictive environment, procedural safeguards, and surrogate parents);

(3) Specify the groups requiring training (i.e. special education teachers, regular teachers, administrators, psychologists, speech-language pathologists, audiologists, physical education teachers, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers, and surrogate parents);

(4) Describe the content and nature of training for each area under paragraph (b)(2) of this section;

(5) Describe how the training will be provided in terms of:

(i) Location and scope; and

(ii) Staff training source (i.e. college and university staff, state, school, Agency personnel, and non-Agency personnel);

(6) Specify:

(i) The funding sources to be used;

(ii) The timeframe for providing staff training; and

(iii) Procedures for effective evaluation of the extent to which program objectives are met.

§ 45.66 Qualifications of staff.

Job qualifications requirements shall be in conformance with 25 CFR 38.4 of the BIA Education Personnel Regulations.

Subpart F—School Administration

§ 45.70 Assurance of compliance.

In connection with each annual application for assistance under this part, each School Supervisor must sign a written assurance that the special education elementary and secondary program operated by the school is currently in compliance with and will, in the future, be operated in compliance with this part and any other applicable Federal law.

§ 45.71 Annual evaluation.

Each Agency must insure that an annual evaluation of the effectiveness of programs in meeting the educational needs of handicapped children is completed. The annual evaluation will be performed in accordance with the following:

(a) The evaluation will be based on the projections made in each agency/school funding application and must include an evaluation of the individual education programs.

(b) Local School Boards and parents must be given the opportunity to be involved in the evaluation.

(c) The Agency Special Education Coordinator will, through a review and comparison of the report with monitoring findings, certify the validity for the annual report.

(d) The Agency Special Education Coordinator will compile the reports and submit the compilation to the Division of Exceptional Education.

(e) The Division will consolidate the evaluation data into a single report on the BIA special education programs.

§45.72 Comparability of facilities.

Facilities which are identifiable as being for handicapped children and the services and activities provided therein, must meet the same standards and level of quality as do facilities, services and activities provided to non-handicapped children.

§45.73 Non-discrimination.

(a) No Bureau of Indian Affairs operated and/or funded school shall deny admission to any qualified Indian handicapped child on the basis of handicap.

(b) Each school must provide each handicapped Indian child enrolled therein whatever educational support services (including tutoring, access to instructional equipment, auxiliary aids) are necessary to permit the child to fully benefit from the program of special education and related services.

Subpart G—Responsibilities of the Division

§45.74 The Division.

(a) The Division of Exceptional Education shall provide staff assistance to the Director, Office of Indian Education Programs to insure conformance with the requirements of this part. The Division shall prepare and submit the annual program plan required by the Education of the Handicapped Act. The Division shall be under the supervision of a Division Chief who reports to the Director.

(b) The Director is responsible for educational programs for handicapped children and has overall responsibility for insuring that every handicapped Indian child enrolled in a Bureau operated or funded school is provided a free appropriate education, and that all requirements of this part are fully complied with by schools, Agencies, and Areas.

§45.75 Monitoring.

(a) The Division of Exceptional Education shall monitor and evaluate the compliance of schools, Agencies, Areas and other affected public and non-public agencies with the requirements of this part consistent with written procedures. This monitoring will include:

(1) Data collection;

(2) On-site visits;

(3) Review of special education Federal fund utilization;

(4) Review of IEP implementation; and

(5) Review of the continued need for residential placements.

(b) Schools, Agencies, Areas, non-public school programs and other affected Agencies shall keep timely, complete and accurate compliance reports. These reports shall contain information to enable the Division to ascertain compliance with the requirements of this part.

(c) Schools, Agencies, Areas, non-public school programs and other affected Agencies must permit the staff of the Division of Exceptional Education access to books, records, accounts, and other pertinent information necessary to ascertain compliance.

(d) The Division of Exceptional Education may conduct inquiries on behalf of an individual child or group of children, regarding failure to comply with any provision of this part.

(e) The Division of Exceptional Education shall monitor implementation of the procedural safeguard requirements of this part.

(f) The Division will provide a written report on the findings and will recommend actions for compliance to the responsible Agency. The Agency has the responsibility of providing this information to the individual school boards and appropriate school officials.

§45.76 Complaint procedures.

(a) The Director shall receive, review, and resolve complaints and act

on any allegations of substance on actions taken by a school or Agency that are contrary to the requirements of this part.

(b) In carrying out the requirements of paragraph (a) of this section the Division will assist Agencies to achieve compliance through:

(1) Technical assistance;

(2) Negotiation; and/or

(3) Third party mediation.

(c) Failure to comply with the requirements of this part (after appropriate action as described in paragraph (b) of this section) shall result in sanctions under existing BIA procedures including the withholding of Pub. L. 94–142 subpart B funds until the Agency or school achieves compliance with the requirements of this part.

§ 45.77 Use of available funds.

The Director shall insure that all funds to which schools become entitled because of the enrollment of handicapped children, be used for the identification, evaluation, and the provision of a free, appropriate education to handicapped Indian children.

§ 45.78 Children for whom the Division of Social Services has accepted financial responsibility.

(a) After the effective date of this part, no handicapped Indian child in the care of the Division of Social Services may be placed in, or referred to any public or private residential facility until the Director is consulted and the education component has been approved.

(b) The Director shall insure that no later than one (1) year from the effective date of this part, every handicapped child currently the responsibility of the Division of Social Services in a public or private residential facility has been evaluated and provided an IEP in full conformance with the requirements of this part. The need of the children for continued residentially-based education services will be carefully accessed during this process.

(c) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped child.

§ 45.79 Cooperative agreements.

(a) The Director, or designee, is authorized to enter into cooperative agreements with state and local education agencies for the provision of special education and related services to handicapped children enrolled in schools, operated and/or funded by the Bureau.

(b) The Director may not enter into any cooperative agreement for the provision of special education and related services with state or local education agencies which, with respect to any aspect of the cooperative special education program, discriminates or has the effect of discriminating, against any child on the basis of race, creed, national origin, tribal affiliation, religion, sex, handicap or eligibility for services provided by the Bureau.

(c) The Director is responsible for ensuring that every eligible Indian handicapped child participating in a cooperative special education program is provided a free, appropriate education in the least restrictive environment consistent with the procedural safeguards required by § 45.34.

§ 45.80 Bureau of Indian Affairs Advisory Committee for Exceptional Children.

(a) The BIA Advisory Committee for Exceptional Children has been chartered under and is subject to the provisions of the Federal Advisory Committee Act, Pub. L. 92–463. The membership of the BIA Advisory Committee for Exceptional Children must be composed of persons involved in or concerned with the education of handicapped Indian children. The membership shall include, but not be limited to:

(1) Handicapped individuals.

(2) Teachers of handicapped children.

(3) Parents of handicapped children.

(4) Agency and school officials.

(5) Special education program administrators.

(b) The advisory committee shall:

(1) Advise the Secretary of Interior, through the Assistant Secretary—Indian Affairs, of unmet special education needs of Indian children;

(2) Comment publicly on the annual program plan and rules or regulations proposed for issuance by the Assistant

Secretary—Indian Affairs regarding the education of handicapped Indian children attending BIA operated or funded schools and the procedures for distribution of funds under this part; and

(3) Assist the Assistant Secretary—Indian Affairs in developing and reporting such information and evaluation.

(c) The advisory committee shall meet as often as necessary to conduct its business.

(d) By July 1 of each year, the advisory committee shall submit an annual report of panel activities and suggestions to the Director and the Assistant Secretary—Indian Affairs. This report must be made available to the public.

(e) Official minutes must be kept on all panel meetings and shall be made available to the public upon request.

(f) All advisory committee meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(g) Interpreters and other necessary services must be provided at committee meetings for committee members or participants.

(h) The advisory panel shall serve without compensation but will be reimbursed for travel and expenses, in compliance with current Federal travel regulations, as published by GSA, for attending meetings and performing duties.

SUBCHAPTER F—TRIBAL GOVERNMENT

PART 61—PREPARATION OF ROLLS OF INDIANS

Sec.
61.1 Definitions.
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61.13 Decision of the Assistant Secretary on appeals.
61.14 Preparation, certification and approval of the roll.
61.15 Special instructions.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 25 U.S.C. 1401 *et seq.*, as amended; Pub. L. 100–139; Pub. L. 100–580; Pub. L. 101–42.

SOURCE: 50 FR 46430, Nov. 8, 1985, unless otherwise noted.

§ 61.1 Definitions.

As used in these regulations:

Act means any act of Congress authorizing or directing the Secretary to prepare a roll of a specific tribe, band, or group of Indians.

Adopted person means a person whose natural parents' parental rights have been given to others to exercise by court order.

Approved roll means a roll of Indians approved by the Secretary.

Assistant Secretary means the Assistant Secretary of the Interior for Indian Affairs or an authorized representative acting under delegated authority.

Basic roll means the specified allotment, annuity, census or other roll designated in the Act or Plan as the basis upon which a new roll is to be compiled.

Commissioner means the Commissioner of Indian Affairs or an authorized representative acting under delegated authority.

Descendant(s) means those persons who are the issue of the ancestor through whom enrollment rights are claimed; namely, the children, grandchildren, etc. It does not include collateral relatives such as brothers, sisters, nieces, nephews, cousins, etc. or adopted children, grandchildren, etc.

Director means the Area Director of the Bureau of Indian Affairs area office which has administrative jurisdiction over the local field office responsible for administering the affairs of the tribe, band, or group for which a roll is being prepared or an authorized representative acting under delegated authority.

Enrollee(s) means persons who have met specific requirements for enrollment and whose names appear on a particular roll of Indians.

Lineal ancestor means an ancestor, living or deceased, who is related to a person by direct ascent; namely, the parent, grandparent, etc. It does not include collateral relatives such as brothers, sisters, aunts, uncles, etc., or adopted parents, grandparents, etc.

Living means born on or before and alive on the date specified.

Plan means any effective plan prepared under the provisions of the Act of October 19, 1973, Pub. L. 93–134, 87 Stat. 466, as amended, which authorizes and directs the Secretary to prepare a roll of a specific tribe, band, or group of Indians.

Secretary means the Secretary of Interior or an authorized representative acting under delegated authority.

Sponsor means any person who files an application for enrollment or appeal on behalf of another person.

Staff Officer means the Enrollment Officer or other person authorized to prepare the roll.

Superintendent means the official or other designated representative of the Bureau of Indian Affairs in charge of the field office which has immediate administrative responsibility for the affairs of the tribe, band, or group for which a roll is being prepared.

Tribal Committee means the body of a federally recognized tribal entity vested with final authority to act on enrollment matters.

Tribal Governing Document means the written organizational statement governing the tribe, band, or group of Indians and/or any valid document, enrollment ordinance, or resolution enacted thereunder.

§61.2 Purpose.

The regulations in this part 61 are to govern the compilation of rolls of Indians by the Secretary of the Interior pursuant to statutory authority. The regulations are not to apply in the compilation of tribal membership rolls where the responsibility for the preparation and maintenance of such rolls rests with the tribes.

§61.3 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the information collection requirements contained in §61.4 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

§61.4 Qualifications for enrollment and the deadline for filing application forms.

(a) The qualifications which must be met to establish eligibility for enrollment and the deadline for filing application forms will be included in this part 61 by appropriate amendments to this section; *except that,* when an Act or Plan states the qualifications for enrollment and the deadline for filing application forms and specifies that the regulations contained in this part 61 will apply, amendment to this section will not be required for the procedures contained in this part 61 to govern the preparation of the roll; *provided further,* the provisions contained in this part 61 that were in effect when the regulations were amended to include paragraphs (r), (s), (w), (x), (y), and (z) shall control the preparation of the rolls under paragraphs (r), (s), (w), (x), (y), and (z) of this section.

(b) *Pembina Band of Chippewa Indians.* (1) Pursuant to section 7(a) of the Act of December 31, 1982, Pub. L. 97–403, 96 Stat. 2022, a roll is to be prepared and used as the basis for the distribution of an apportioned share of judgment funds awarded the Pembina Chippewa Indians in dockets numbered 113, 191, 221 and 246 of the Court of Claims of all persons who:

(i) Are of at least ¼ degree Pembina Chippewa blood;

(ii) Are citizens of the United States;

(iii) Were living on December 31, 1982;

(iv) Are not members of the Red Lake Band of Chippewa Indians, the Turtle Mountain Band of Chippewa Indians, the Chippewa Cree Tribe of the Rocky Boy's Reservation, or Minnesota Chippewa Tribe, or the Little Shell Band of Chippewa Indians of Montana; *and*

(v) Are enrolled or are lineal descendants of persons enrolled:

(A) As Pembina descendants under the provisions of the Act of July 29, 1971 (85 Stat. 158), for the disposition of the 1863 Pembina Award, or

(B) On the McCumber roll of the Turtle Mountain Indians of 1892, or

(C) On the Davis roll of the Turtle Mountain Indians of 1904; or

(D) As Chippewa on the tentative roll of the Rocky Boy Indians of May 30, 1917, or the McLaughlin census report of the Rocky Boy Indians of July 7, 1917, or the Roe Cloud Roll of Landless Indians of Montana; *or*

(vi) Are able to establish Pembina ancestry on the basis of any other rolls or records acceptable to the Secretary.

(2) Application forms for eligibility must be filed with the Superintendent, Turtle Mountain Agency, Bureau of Indian Affairs, Belcourt, North Dakota 58316, by March 10, 1986. Application forms filed after that date will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for eligibility.

(3) Each application for enrollment as a member of any of the tribes specified in paragraph (b)(1)(iv) of this section, except the Red Lake Band of Chippewa Indians, which may be rejected by the tribes shall be reviewed by the Superintendent to determine whether the applicant meets the qualifications for eligibility as a descendant of the Pembina Band of Chippewas under paragraph (b)(1) of this section. Each rejection notice shall contain a statement to the effect that the application is being given such review.

(c) *Cherokee Band of Shawnee Indians.* (1) Pursuant to section 5 of the Act of December 20, 1982, Pub. L. 97–372, 96 Stat. 1815, a roll is to be prepared and

used as the basis for the distribution of an apportioned share of judgment funds awarded the Shawnee Tribe in dockets 64, 335, and 338 by the Indian Claims Commission and in docket 64–A by the U.S. Court of Claims of all persons of Cherokee Shawnee ancestry:

(i) Who were living on December 20, 1982;

(ii) Who are lineal descendants of the Shawnee Nation as it existed in 1854, based on the roll of the Cherokee Shawnee compiled pursuant to the Act of March 2, 1889 (25 Stat. 994), or any other records acceptable to the Secretary including eligibility to share in the distribution of judgment funds awarded the Absentee Shawnee Tribe of Oklahoma on behalf of the Shawnee Nation in Indian Claims Commission docket 334–B as a Cherokee Shawnee descendant; *and*

(iii) Who are not members of the Absentee Shawnee Tribe of Oklahoma or the Eastern Shawnee Tribe of Oklahoma.

(2) Application forms for enrollment must be filed with the Director, Muskogee Area Office, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401, by May 9, 1986. Application forms filed after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

(d) *Miami Indians of Indiana.* (1) Pursuant to section 3 of the Act of December 21, 1982, Pub. L. 97–376, 96 Stat. 1828, a roll is to be prepared and used as the basis for the distribution of an apportioned share of judgment funds awarded the Miami Tribe of Oklahoma and the Miami Indians of Indiana in dockets 124–B and 254 by the U.S. Court of Claims of all persons of Miami Indian ancestry:

(i) Who were living on December 21, 1982;

(ii) Whose name or the name of a lineal ancestor appears on:

(A) The roll of Miami Indians of Oklahoma and Indiana prepared pursuant to the Act of June 2, 1972 (86 Stat. 199), or

(B) The roll of Miami Indians of Indiana of June 12, 1895, or

(C) The roll of ''Miami Indians of Indiana, now living in Kansas, Quapaw Agency, I.T., and Oklahoma Territory,'' prepared and completed pursuant to the Act of March 2, 1895 (28 Stat. 903), or

(D) The roll of the Eel River Miami Tribe of Indians of May 27, 1889, prepared and completed pursuant to the Act of June 29, 1888 (25 Stat. 223), or

(E) The roll of the Western Miami Tribe of Indians of June 12, 1891 (26 Stat. 1001); *and*

(iii) Who are not members of the Miami Tribe of Oklahoma.

(2) Application forms for enrollment must be filed with the Director, Muskogee Area Office, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401, by May 9, 1986. Application forms filed after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

(e) *Cow Creek Band of Umpqua Tribe of Indians.* (1) Pursuant to section 5 of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987, Pub. L. 100–139, a tribal membership roll is to be prepared comprised of all persons who are able to establish that they are of Cow Creek or other Indian ancestry indigenous to the United States based on any rolls or records acceptable to the Secretary and were not members of any other Federally recognized Indian tribe on July 30, 1987; and:

(i) Who are named on the tribal roll dated September 13, 1980, the so-called Interrogatory No. 14 roll;

(ii) Who are descendants of individuals named on the tribal roll dated September 13, 1980, the so-called Interrogatory No. 14 roll, and were born on or prior to October 26, 1987; or

(iii) Who are descendants of individuals who were considered to be members of the Cow Creek Band of Umpqua Tribe of Indians for the purposes of the treaty entered between such Band and the United States on September 19, 1853.

(2) Application forms for enrollment must be filed with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P.O. Box 539, Siletz, Oregon 97380

by June 1, 1990. Application forms filed after that date will be rejected for inclusion on the tribal membership roll for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

(f) *Cow Creek Band of Umpqua Tribe of Indians descendants.* (1) Pursuant to section 6(a)(1) of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987, Pub. L. 100–139, a roll of nontribal members eligible to participate in the Higher Education and Vocational Training Program and the Housing Assistance Program of the Cow Creek Band of Umpqua Tribe of Indians is to be prepared of individuals:

(i) Who are descended from persons considered members of the Cow Creek Band of Umpqua Tribe of Indians for purposes of the treaty entered into between such band and the United States on September 19, 1853 (10 Stat. 1027), as ratified by the Senate on April 12, 1854; and

(ii) Who did not share or are not descendants of persons who shared in the distribution of funds under the Act entitled ''An Act to provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individuals members thereof, and for other purposes,'' approved August 13, 1954 (25 U.S.C. 564 *et seq.*), or under the Act entitled ''An Act to provide for the termination of Federal supervision over the property of certain tribes and bands of Indians located in western Oregon and the individual members thereof, and for other purposes,'' approved August 13, 1954 (25 U.S.C. 691 *et seq.*).

(2) Application forms for enrollment must be filed with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P. O. Box 539, Siletz, Oregon 97380. Upon receipt of an application form, the Superintendent shall furnish a copy to the Cow Creek Band of Umpqua Tribe of Indians.

(g) *Cow Creek Band of Umpqua Tribe of Indians descendants.* (1) Pursuant to section 6(a)(2) of the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987, Pub. L. 100–139, a roll of nontribal members eligible to participate in the Elderly Assistance Program of the Cow Creek Band of Umpqua Tribe of Indians is to be prepared of individuals:

(i) Who are descended from persons considered members of the Cow Creek Band of Umpqua Tribe of Indians for purposes of the treaty entered into between such Band and the United States on September 19, 1853 (10 Stat. 1027), as ratified by the Senate on April 12, 1854;

(ii) Who did not share or are not descendants of persons who shared in the distribution of funds under the Act entitled ''An act to provide for the termination of Federal supervision over the property of the Klamath Tribe of Indians located in the State of Oregon and the individual members thereof, and for other purposes,'' approved August 13, 1954 (25 U.S.C. 564 *et seq.*), or under the Act entitled ''An Act to provide for the termination of Federal supervision over the property of certain tribes and bands of Indians located in western Oregon and the individual members thereof, and for other purposes,'' approved August 13, 1954 (25 U.S.C. 691 *et seq.*); and

(iii) Who were 50 years or older as of December 31, 1985.

(2) Application forms for enrollment must be filed with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P. O. Box 539, Siletz, Oregon 97380 by April 25, 1988, and with the Cow Creek Band of Umpqua Tribe of Indians. Application forms filed after that date will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for eligibility for inclusion on the roll of persons eligible to participate in the Elderly Assistance Program, but will be considered for inclusion on the roll of persons eligible to participate in the Higher Education and Vocation Training Program and the Housing Assistance Program. Upon receipt of an application form, the Superintendent shall furnish a copy to the Cow Creek Band of Umpqua Tribe of Indians.

(h) *Indians of the Hoopa Valley Indian Reservation.* Pursuant to section 5 of the Hoopa-Yurok Settlement Act of October 31, 1988, Pub. L. 100–580, a roll of Indians of the Reservation eligible to participate in certain settlement provisions is to be prepared of all persons:

(1) Who were born on or prior to and living on October 31, 1988; and

(2) Who are citizens of the United States; and

(3) Who were not, on August 8, 1988, enrolled members of the Hoopa Valley Tribe; and

(4) Who meet the criteria to qualify as an ''Indian of the Reservation'' under one of the following standards established by the U.S. Court of Claims in its March 31, 1982, decision, and the United States Claims Court in its May 14, 1987, and March 1, 1988, decisions in the cases of *Short* v. *United States,* (Cl. Ct. No. 102–63):

(i) Standards A–E which are:

(A) Allottees of land on any part of the Reservation, living on October 1, 1949, and lineal descendants of allottees living on October 1, 1949;

(B) Persons living on October 1, 1949, and resident on the reservation at that time, who have received Reservation benefits or services, and hold an assignment, or can make other proof that though eligible to receive an allotment, they have not been allotted, and the lineal descendants of such persons, living on October 1, 1949;

(C) Persons living on June 2, 1953, who have at least ¼ degree Reservation blood, as defined in paragraph (h)(6)(i) of this section, have forebears born on the Reservation and were resident on the Reservation for 15 years prior to June 2, 1953;

(D) Persons of at least ¼ degree Indian blood, born after October 1, 1949, and before August 9, 1963, to a parent who is or would have been, when alive a qualified Indian of the Reservation under the standards in paragraphs (h)(4)(i) (A), (B) and (C) of this section, or has previously been held entitled to recover in the *Short* cases;

(E) Persons born on or after August 9, 1963, who are of at least ¼ degree Indian blood, derived exclusively from the qualified parent or parents who is or would have been, when alive, a qualified Indian of the Reservation under the standards in paragraphs (h)(4)(i) (A), (B) and (C) of this section, or has previously been held entitled to recover in the *Short* cases; or

(ii) Manifest Injustice Standard which is: Persons who do not qualify under the standards in paragraph (h)(4)(i) of this section, but who it would be manifestly unjust to exclude from enrollment. To qualify under the manifest injustice standard, persons must adequately demonstrate all of the following:

(A) A significant degree of Indian blood (at least ¼ degree Indian blood, and

(B) Personal connections to the Reservation shown through a substantial period of residence on the Reservation (nearly ten years of residence), and

(C) Personal ties to the land of the Reservation and/or ties to the land through a lineal ancestor; and

(5) Who file or have filed on their behalf application forms for enrollment with the Superintendent, Northern California Agency, Bureau of Indian Affairs, P.O. Box 494879, Redding, California 96049, by April 10, 1989. Applications filed after that date will not be considered for inclusion on the roll regardless of whether the applicant otherwise meets the qualifications for enrollment, except for plaintiffs determined to be an ''Indian of the Reservation'' in the *Short* cases, who will, if they otherwise meet the requirements of the Act, be included on the roll.

(6) As used in paragraph (h) of this section:

(i) *Reservation blood* means the blood of the following tribes or bands: Yurok; Hoopa/Hupa; Grouse Creek; Hunstand/Hoonsotton/Hoonsolton; Miskut/Miscotts/Miscolts; Redwood/Chilula; Saiaz/Nongatl/Siahs; Sermaltion; South Fork; Tish-tang-atan; Karok; Tolowa; Sinkyone/Sinkiene; Wailake/Wylacki; Wiyot/Humboldt; and Wintun.

(ii) *Short* cases means the cases entitled *Jessie Short et al.* v. *United States,* (Cl. Ct. No. 102–63); *Charlene Ackley* v. *United States,* (Cl. Ct. No. 460–78); *Bret Aastadt* v. *United States,* (Cl. Ct. No. 146–85L); and *Norman Giffen* v. *United States,* (Cl. Ct. No. 746–85L).

(i) [Reserved]

(j) *Coquille Tribe of Indians.* (1) Pursuant to section 7 of the Coquille Restoration Act of June 28, 1989, Pub. L. 101–42, a tribal membership roll is to be prepared comprised of persons of Coquille Indian ancestry:

(i) Who were born on or before and living on June 28, 1989;

(ii) Who possess at least one-eighth (⅛) degree or more Indian blood;

(iii) Who are not enrolled members of another federally recognized tribe; and

(iv) Whose names were listed on the Coquille roll prepared pursuant to the Act of August 30, 1954 (68 Stat. 979; 25 U.S.C. 771), and approved by the Bureau of Indian Affairs on August 29, 1960;

(v) Whose names were not listed on but who met the requirements to be listed on the Coquille roll prepared pursuant to the Act of August 30, 1954, and approved by the Bureau of Indian Affairs on August 29, 1960; or

(vi) Who are lineal descendants of persons, living or dead, identified in paragraphs (j)(1)(iv) and (j)(1)(v) of this section.

(2) To establish eligibility for inclusion on the tribal membership roll, all persons must file an application form with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P.O. Box 539, Siletz, Oregon 97380 by January 10, 1991. Application forms filed after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

(3) For the purposes of establishing eligibility under paragraph (j) of this section, any available evidence establishing Coquille ancestry and the required degree of Indian blood shall be accepted. However, information shown on the Coquille roll prepared pursuant to the Act of August 30, 1954, shall be accepted as conclusive evidence of Coquille ancestry and blood degree information shown on the January 1, 1940, census roll of nonreservation Indians of the Grand Ronde-Siletz Agency shall be accepted as conclusive evidence in determining degree of Indian blood for applicants.

(4) For the purposes of establishing eligibility under paragraph (j) of this section, persons who may be enrolled members of another federally recognized tribe or tribes may submit a conditional relinquishment of membership document in the other tribe or tribes with their application forms. A conditional relinquishment of membership document in the other tribe or tribes with their application forms. A conditional relinquishment will be accepted by the Superintendent only if it is executed by the person himself or herself unless the person is legally incompetent, in which case the legal guardian and only the legal guardian may execute the conditional relinquishment document. In the case of minors, only the parent or legal guardian may execute a conditional relinquishment document.

(k)–(q) [Reserved]

(r) *Mdewakanton and Wahpakoota Tribe of Sioux Indians.* (1) All lineal descendants of the Mdewakanton and Wahpakoota Tribe of Sioux Indians who were born on or prior to and were living on October 25, 1972, whose names or the name of a lineal ancestor appears on any available records and rolls acceptable to the Secretary of the Interior and who are not members of the Flandreau Santee Sioux Tribe of South Dakota, the Santee Sioux Tribe of Nebraska, the Lower Sioux Indian Community at Morton, Minn., the Prairie Island Indian Community at Welch, Minn., or the Shakopee Mdewakanton Sioux Community of Minnesota shall be entitled to be enrolled under title I, section 101(b) of the act of October 25, 1972 (86 Stat. 1168), to share in the distribution of funds derived from a judgment awarded the Mississippi Sioux Indians.

(2) Applications for enrollment must have been filed with the Director, Aberdeen Area Office, Bureau of Indian Affairs, 820 South Main Street, Aberdeen, S. Dak. 57401, and must have been received no later than November 1, 1973. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Each application for enrollment with any of the tribes named in paragraph (r)(1) of this section which may be rejected by the tribes shall be reviewed by the Director to determine whether the applicant meets the requirements for enrollment as a descendant of the Mdewakanton and Wahpakoota Tribe of Sioux Indians under paragraph (r)(1) of this section. Each rejection notice issued by the tribes shall contain a statement to the effect that the application is being given such review.

(s) *Sisseton and Wahpeton Mississippi Sioux Tribe.* (1) All lineal descendants of the Sisseton and Wahpeton Mississippi Sioux Tribe who were born on or prior to and were living on October 25, 1972, whose names or the name of a lineal ancestor appears on any available records and rolls acceptable to the Secretary of the Interior and who are not members of the Devils Lake Sioux Tribe of North Dakota, the Sisseton and the Wahpeton Sioux Tribe of South Dakota, or the Assiniboine and Sioux Tribes of the Fort Peck Reservation shall be entitled to be enrolled under title II, section 201(b) of the act of October 25, 1972 (86 Stat. 1168), to share in the distribution of certain funds derived from a judgment awarded the Mississippi Sioux Indians.

(2) Applications for enrollment must have been filed with the Director, Aberdeen Area Office, Bureau of Indian Affairs, 820 South Main Street, Aberdeen, S. Dak. 57401, and must have been received no later than November 1, 1973. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Each application for enrollment with any of the tribes named in paragraph (s)(1) of this section which may be rejected by the tribes shall be reviewed by the Director to determine whether the applicant meets the requirements for enrollment as a descendant of the Sisseton and Wahpeton Mississippi Sioux Tribe under paragraph (s)(1) of this section. Each rejection notice issued by the tribe shall contain a statement to the effect that the application is being given such review.

(t)–(v) [Reserved]

(w) *Lower Skagit Tribe of Indians.* (1) All persons of Lower Skagit ancestry born on or prior to and living on February 18, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on the 1919 Roblin Roll and other records acceptable to the Assistant Secretary, shall be entitled to have their names placed on the roll, to be prepared and used as the basis to distribute the judgment funds awarded the Lower Skagit Tribe in Indian Claims Commission docket 294. Proof of Upper Skagit ancestry will not be acceptable as proof of Lower Skagit ancestry.

(2) Applications for enrollment must have been filed with the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 88201, and must have been received by close of business on May 31, 1977. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with parts 87 and 115 of this chapter.

(x) *Kikiallus Tribe of Indians.* (1) All persons of Kikiallus ancestry born on or prior to and living on February 18, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on the 1919 Roblin Roll and other records acceptable to the Assistant Secretary, shall be entitled to have their names placed on the roll, to be prepared and used as the basis to distribute the judgment funds awarded the Kikiallus Tribe in Indian Claims Commission docket 263.

(2) Applications for enrollment must have been filed with the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98021, and must have been received by close of business on May 31, 1977. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with parts 87 and 115 of this chapter.

(y) *Swinomish Tribe of Indians.* (1) All persons of Swinomish ancestry born on or prior to and living on December 10, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on the 1919 Roblin Roll and other records acceptable to the Assistant Secretary, shall be entitled to have their names placed on the roll, to be prepared and used as the basis to distribute the judgment funds awarded the Swinomish Tribe in Indian Claims Commission docket 233.

(2) Application for enrollment must have been filed with the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98201, and must have been received by close of business on May 31, 1977. Applications received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with parts 87 and 115 of this chapter.

(z) *Samish Tribe of Indians.* (1) All persons of Samish ancestry born on or prior to and living on December 10, 1975, who are lineal descendants of a member of the tribe as it existed in 1859 based on any records acceptable to the Secretary, shall be entitled to have their names placed on the roll to be prepared and used as the basis to distribute the judgment funds awarded the Samish Tribe in Indian Claims Commission docket 261.

(2) Applications for enrollment must have been filed with the Superintendent, Puget Sound Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Everett, Washington 98201, and must have been received by close of business on May 31, 1977. Applicants received after that date will be denied for failure to file in time regardless of whether the applicant otherwise meets the requirements for enrollment.

(3) Payment of shares will be made in accordance with parts 87 and 115 of this chapter.

[50 FR 46430, Nov. 8, 1985, as amended at 53 FR 11272, Apr. 6, 1988; 54 FR 14193, Apr. 7, 1989; 55 FR 7494, Mar. 2, 1990; 55 FR 41519, Oct. 12, 1990; 56 FR 10806, Mar. 14, 1991]

§ 61.5 Notices.

(a) The Director or Superintendent shall give notice to all Directors of the Bureau of Indian Affairs and all Superintendents within the jurisdiction of the Director, of the preparation of the roll for public display in Bureau field offices. Reasonable efforts shall be made to place notices for public display in community buildings, tribal buildings, and Indian centers.

(b) The Director or Superintendent shall, on the basis of available residence data, publish, and republish when advisable, notices of the preparation of the roll in appropriate locales utilizing media suitable to the circumstances.

(c) The Director or Superintendent shall, when applicable, mail notices of the preparation of the roll to previous enrollees or tribal members at the last address of record or in the case of tribal members, the last address available.

(d) Notices shall advise of the preparation of the roll and the relevant procedures to be followed including the qualifications for enrollment and the deadline for filing application forms to be eligible for enrollment. The notices shall also state how and where application forms may be obtained as well as the name, address, and telephone number of a person who may be contacted for further information.

§ 61.6 Application forms.

(a) Application forms to be filed by or for applicants for enrollment will be furnished by the Director, Superintendent, or other designated persons, upon written or oral request. Each person furnishing application forms shall keep a record of the names of individuals to whom forms are given, as well as the control numbers of the forms and the date furnished. Instructions for completing and filing applications shall be furnished with each form. The form shall indicate prominently the deadline for filing application forms.

(b) Among other information, each application form shall contain:

(1) Certification as to whether application form is for a natural child or an adopted child of the parent through whom eligibility is claimed.

(2) If the application form is filed by a sponsor, the name and address of sponsor and relationship to applicant.

(3) A control number for the purpose of keeping a record of forms furnished interested individuals.

(4) Certification that the information given on the application form is true to the best of the knowledge and belief of the person filing the application. Criminal penalties are provided by statute for knowingly filing false information in such applications (18 U.S.C. 1001).

(c) Application forms may be filed by sponsors on behalf of other persons.

(d) Every applicant or sponsor shall furnish the applicant's mailing address on the application form. Thereafter, the applicant or sponsor shall promptly notify the Director or Superintendent of any change in address, giving appropriate identification of the application, otherwise the mailing address as stated on the form shall be acceptable as the address of record for all purposes under the regulations in this part 61.

§ 61.7 Filing of application forms.

(a) Application forms filed by mail must be postmarked no later than midnight on the deadline specified. Where there is no postmark date showing on the envelope or the postmark date is illegible, application forms mailed from within the United States, including Alaska and Hawaii, received more than 15 days and application forms mailed from outside of the United States received more than 30 days after the deadline specified in the office of the designated Director or Superintendent, will be denied for failure to file in time.

(b) Application forms filed by personal delivery must be received in the office of the designated Director or Superintendent no later than close of business on the deadline specified.

(c) If the deadline for filing application forms falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the deadline will be the next working day thereafter.

(d) The provisions of this section shall not apply in the preparation of the rolls under paragraphs (r), (s), (w), (x), (y) and (z) of § 61.4.

§ 61.8 Verification forms.

If the Director or Superintendent is preparing a roll of Indians by adding names of eligible persons to and deleting names of ineligible persons from a previously approved roll, *and* individuals whose names appear on the previously approved roll are not required to file applications for enrollment, a verification form, to be completed and returned, shall be mailed to each previous enrollee using the last address of record. The verification form will be used to ascertain the previous enrollee's current name and address and that the enrollee is living, or if deceased, the enrollee's date of death. Name and/or address changes will only be made if the verification form is signed by an adult enrollee, if living, or the parent or guardian having legal custody of a minor enrollee, or an authorized sponsor. The verification form may also be used by any sponsor to notify the Director or Superintendent of the date of death of a previous enrollee.

§ 61.9 Burden of proof.

The burden of proof rests upon the applicant or tribal member to establish eligibility for enrollment. Documentary evidence such as birth certificates, death certificates, baptismal records, copies of probate findings, or affidavits, may be used to support claim of eligibility for enrollment. Records of the Bureau of Indian Affairs may be used to establish eligibility.

§ 61.10 Review of applications by tribal authorities.

(a) If tribal review is applicable, the Director or Superintendent shall submit all applications to the Tribal Committee for review and recommendations or determinations; except that, in the cases of adopted persons where the Bureau of Indian Affairs has assured confidentiality to obtain the information necessary to determine the eligibility for enrollment of the individual or has the statutory obligation to maintain the confidentiality of the information, the confidential information may not be released to the Tribal Committee, but the Director or Superintendent shall certify as to the eligibility for enrollment of the individual to the Tribal Committee.

(b) The Tribal Committee shall review all applications and make its recommendations or determinations in writing stating the reasons for acceptance or rejection for enrollment.

(c) The Tribal Committee shall return the applications to the Director or Superintendent with its recommendations or determinations and any additional evidence used in determining eligibility for enrollment within 30 days of receipt of the applications by the Tribal Committee. The Director or Superintendent may grant the Tribal Committee additional time, upon request, for its review.

(d) Acceptance of an individual for enrollment by the Tribal Committee does not insure the individual's eligibility to share in the distribution of the judgment funds.

§61.11 Action by the Director or Superintendent.

(a) The Director or Superintendent shall consider each application, all documentation, and when applicable, tribal recommendations or determinations.

(b) The Director or Superintendent, when tribal recommendations or determinations are applicable, shall accept the recommendations or determinations of the Tribal Committee unless clearly erroneous.

(1) If the Director or Superintendent does not accept the tribal recommendation or determination, the Tribal Committee shall be notified in writing, by certified mail, return receipt requested, or by personal delivery, of the action and the reasons therefor.

(2) The Tribal Committee may appeal the decision of the Director or Superintendent not to accept the tribal recommendation or determination. Such appeal must be in writing and must be filed pursuant to part 62 of this chapter.

(3) Unless otherwise specified by law or in a tribal governing document, the determination of the Director or Superintendent shall only affect the individual's eligibility to share in the distribution of judgment funds.

(c) The Director or Superintendent, upon determining an individual's eligibility, shall notify the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable, in writing of the decision. If an individual files applications on behalf of more than one person, one notice of eligibility or adverse action may be addressed to the person who filed the applications. However, the notice must list the name of each person involved. Where an individual is represented by a sponsor, notification of the sponsor of eligibility or adverse action shall be considered to be notification of the individual.

(1) If the Director or Superintendent determines that the individual is eligible, the name of the individual shall be placed on the roll.

(2) If the Director or Superintendent determines that the individual is not eligible, he/she shall notify the individual's parent or guardian having legal custody of a minor, or sponsor, as applicable, in writing by certified mail, to be received by the addressee only, return receipt requested, and shall explain fully the reasons for the adverse action and the right to appeal to the Secretary. If correspondence is sent out of the United States, registered mail will be used. If a certified or registered notice is returned as ''Unclaimed'' the Director or Superintendent shall remail the notice by regular mail together with an acknowledgment of receipt form to be completed by the addressee and returned to the Director or Superintendent. If the acknowledgment of receipt is not returned, computation of the appeal period shall begin on the date the notice was remailed. Certified or registered notices returned for any reason other than ''Unclaimed'' need not be remailed.

(d) Except as provided in paragraph (c)(2) of this section, a notice of adverse action is considered to have been made and computation of the appeal period shall begin on the earliest of the following dates:

(1) Of delivery indicated on the return receipt;

(2) Of acknowledgment of receipt;

(3) Of personal delivery; or

(4) Of the return by the post office of an undelivered certified or registered letter.

(e) In all cases where an applicant is represented by an attorney, the attorney shall be recognized as fully controlling the application on behalf of the applicant and service on the attorney of any document relating to the application shall be considered to be service on the applicant. Where an applicant is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(f) To avoid hardship or gross injustice, the Director or Superintendent may waive technical deficiencies in applications or other submissions. Failure to file by the deadline does not constitute a technical deficiency.

§ 61.12 Appeals.

Appeals from or on behalf of tribal members or applicants who have been denied enrollment must be in writing and must be filed pursuant to part 62 of this chapter. When the appeal is on behalf of more than one person, the name of each person must be listed in the appeal. A copy of part 62 of this chapter shall be furnished with each notice of adverse action.

§ 61.13 Decision of the Assistant Secretary on appeals.

The decision of the Assistant Secretary on an appeal shall be final and conclusive and written notice of the decision shall be given the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable. The name of any person whose appeal has been sustained will be added to the roll. Unless otherwise specified by law or in a tribal governing document, the determination of the Assistant Secretary shall only affect the individual's eligibility to share in the distribution of the judgment funds.

§ 61.14 Preparation, certification and approval of the roll.

(a) The staff officer shall prepare a minimum of five copies of the roll of those persons determined to be eligible for enrollment. The roll shall contain for each person a roll number, name, address, sex, date of birth, date of death, when applicable, and when required by law, degree of Indian blood, and, in the remarks column, when applicable, the basic roll number, date of the basic roll, name and relationship of ancestor on the basic roll through whom eligibility was established.

(b) A certificate shall be attached to the roll by the staff officer or Superintendent certifying that to the best of his/her knowledge and belief the roll contains only the names of those persons who were determined to meet the qualifications for enrollment.

(c) The Director shall approve the roll.

§ 61.15 Special instructions.

To facilitate the work of the Director or Superintendent, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this part 61.

PART 62—ENROLLMENT APPEALS

Sec.
62.1 Definitions.
62.2 Purpose.
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62.11 Action by the Assistant Secretary.
62.12 Special instructions.

AUTHORITY: 5 U.S.C. 301, 25 U.S.C. 2 and 9.

SOURCE: 52 FR 30160, Aug. 13, 1987, unless otherwise noted.

§ 62.1 Definitions.

As used in these regulations:

Assistant Secretary means the Assistant Secretary of the Interior for Indian Affairs or an authorized representative acting under delegated authority.

Bureau means the Bureau of Indian Affairs of the Department of the Interior.

Commissioner means the Commissioner of Indian Affairs or an authorized representative acting under delegated authority.

Department means the Department of the Interior.

Director means the Area Director of the Bureau of Indian Affairs area office which has administrative jurisdiction over the local field office responsible for administering the affairs of a tribe, band, or group of Indians or an authorized representative acting under delegated authority.

Secretary means the Secretary of the Interior or an authorized representative acting under delegate authority.

Sponsor means any authorized person, including an attorney, who files an appeal on behalf of another person.

Superintendent means the official or other designated representative of the Bureau of Indian Affairs in charge of the field office which has immediate administrative responsibility with respect to the affairs of a tribe, band, or group of Indians or an authorized representative acting under delegated authority.

Tribal committee means the body of a federally recognized tribal entity vested with final authority to act on enrollment matters.

Tribal governing document means the written organizational statement governing a tribe, band or group of Indians and/or any valid document, enrollment ordinance or resolution enacted thereunder.

Tribal member means a person who meets the requirements for enrollment in a tribal entity and has been duly enrolled.

§62.2 Purpose.

(a) The regulations in this part are to provide procedures for the filing and processing of appeals from adverse enrollment actions by Bureau officials.

(b) The regulations in this part are not applicable and do not provide procedures for the filing of appeals from adverse enrollment actions by tribal committees, unless:

(1) The adverse enrollment action is incident to the preparation of a tribal roll subject to Secretarial approval; or

(2) An appeal to the Secretary is provided for in the tribal governing document.

§62.3 Information collection.

In accordance with the Office of Management and Budget regulations contained in 5 CFR 1320.3, approval of the information collection requirements contained in this part is not required.

§62.4 Who may appeal.

(a) A person who is the subject of an adverse enrollment action may file or have filed on his/her behalf an appeal. An adverse enrollment action is:

(1) The rejection of an application for enrollment by a Bureau official incident to the preparation of a roll for Secretarial approval;

(2) The removal of a name from a tribal roll by a Bureau official incident to review of the roll for Secretarial approval;

(3) The rejection of an application for enrollment or the disenrollment of a tribal member by a tribal committee when the tribal governing document provides for an appeal of the action to the Secretary;

(4) The change in degree of Indian blood by a tribal committee which affects a tribal member when the tribal governing document provides for an appeal of the action to the Secretary;

(5) The change in degree of Indian blood by a Bureau official which affects an individual; and

(6) The certification of degree of Indian blood by a Bureau official which affects an individual.

(b) A tribal committee may file an appeal as provided for in §61.11 of this chapter.

(c) A sponsor may file an appeal on behalf of another person who is subject to an adverse enrollment action.

§62.5 An appeal.

(a) An appeal must be in writing and must be filed with the Bureau official designated in the notification of an adverse enrollment action, or in the absence of a designated official, with the Bureau official who issued the notification of an adverse enrollment action; or when the notification of an adverse action is made by a tribal committee with the Superintendent.

(b) An appeal may be on behalf of more than one person. However, the name of each appellant must be listed in the appeal.

(c) An appeal filed by mail or filed by personal delivery must be received in the office of the designated Bureau official or of the Bureau official who issued the notification of an adverse enrollment action by close of business within 30 days of the notification of an adverse enrollment action, except when the appeal is mailed from outside the United States, in which case the appeal must be received by the close of business within 60 days of the notification of an adverse enrollment action.

(d) The appellant or sponsor shall furnish the appellant's mailing address in the appeal. Thereafter, the appellant or sponsor shall promptly notify the Bureau official with whom the appeal was filed of any change of address, otherwise the address furnished in the appeal shall be the address of record.

(e) An appellant or sponsor may request additional time to submit supporting evidence. A period considered reasonable for such submissions may be granted by the Bureau official with

whom the appeal is filed. However, no additional time will be granted for the filing of the appeal.

(f) In all cases where an appellant is represented by a sponsor, the sponsor shall be recognized as fully controlling the appeal on behalf of the appellant. Service of any document relating to the appeal shall be on the sponsor and shall be considered to be service on the appellant. Where an appellant is represented by more than one sponsor, service upon one of the sponsors shall be sufficient.

§ 62.6 Filing of an appeal.

(a) Except as provided in paragraph (b) of this section, a notification of an adverse enrollment action will be mailed to the address of record or the last available address and will be considered to have been made and computation of the appeal period shall begin on:

(1) The date of delivery indicated on the return receipt when notice of the adverse enrollment action has been sent by certified mail, return receipt requested; or

(2) Ten (10) days after the date of the decision letter to the individual when notice of the adverse enrollment action has not been sent by certified mail return receipt requested and the letter has not been returned by the post office; or

(3) The date the letter is returned by the post office as undelivered whether the notice of the adverse enrollment action has been sent by certified mail return receipt requested or by regular mail.

(b) When notification of an adverse enrollment action is under the regulations contained in part 61 of this chapter, computation of the appeal period shall be in accordance with § 61.11.

(c) In computing the 30 or 60 day appeal period, the count begins with the day following the notification of an adverse enrollment action and continues for 30 or 60 calendar days. If the 30th or 60th day falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the appeal period will end on the first working day thereafter.

§ 62.7 Burden of proof.

(a) The burden of proof is on the appellant or sponsor. The appeal should include any supporting evidence not previously furnished and may include a copy or reference to any Bureau or tribal records having a direct bearing on the action.

(b) Criminal penalties are provided by statute for knowingly filing false or fraudulent information to an agency of the U.S. government (18 U.S.C. 1001).

§ 62.8 Advising the tribal committee.

Whenever applicable, the Superintendent or Director shall notify the tribal committee of the receipt of the appeal and shall give the tribal committee the opportunity to examine the appeal and to present such evidence as it may consider pertinent to the action being appealed. The tribal committee shall have not to exceed 30 days from receipt of notification of the appeal in which to present in writing such statements as if may deem pertinent, supported by any tribal records which have a bearing on the case. The Director or Superintendent may grant the tribal committee additional time, upon request, for its review.

§ 62.9 Action by the Superintendent.

When an appeal is from an adverse enrollment action taken by a Superintendent or tribal committee, the Superintendent shall acknowledge in writing receipt of the appeal and shall forward the appeal to the Director together with any relevant information or records; the recommendations of the tribal committee, when applicable; and his/her recommendations on the appeal.

§ 62.10 Action by the Director.

(a) Except as provided in paragraph (c) of this section, when an appeal is from an adverse enrollment action taken by a Superintendent or tribal committee, the Director will consider the record as presented together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision. The Director shall make a decision on the

appeal which shall be final for the Department and which shall so state in the decision. The appellant or sponsor will be notified in writing of the decision. Provided that, the Director may waive his/her authority to make a final decision and forward the appeal to the Assistant Secretary for final action.

(b) When an appeal is from an adverse enrollment action taken by a Director, the Director shall acknowledge in writing receipt of the appeal and shall forward the appeal to the Assistant Secretary for final action together with any relevant information or records; the recommendations of the tribal committee, when applicable; and his/her recommendations.

(c) The Director shall forward the appeal to the Assistant Secretary for final action together with any relevant information or records; the recommendations of the tribal committee, when applicable; and his/her recommendations when the adverse enrollment action which is being appealed is either:

(1) The change in degree of Indian blood by a tribal committee which affects a tribal member and the tribal governing document provides for an appeal of the action to the Secretary; or

(2) The change in degree of Indian blood by a Bureau official which affects an individual.

§62.11 Action by the Assistant Secretary.

The Assistant Secretary will consider the record as presented, together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision. The Assistant Secretary shall make a decision on the appeal which shall be final for the Department and which shall so state in the decision. The appellant or sponsor will be notified in writing of the decision.

§62.12 Special instructions.

To facilitate the work of the Director, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this part 62.

PART 63—INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION

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AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9, 13, 200, 3201 *et seq.*; 42 U.S.C. 13041.

SOURCE: 61 FR 32274, June 21, 1996, unless otherwise noted.

Subpart A—Purpose, Policy, and Definitions

§ 63.1 Purpose.

The purpose of these regulations is to prescribe minimum standards of character and suitability for employment for individuals whose duties and responsibilities allow them regular contact with or control over Indian children, and to establish the method for distribution of funds to support tribally operated programs to protect Indian children and reduce the incidents of family violence in Indian country as authorized by the Indian Child Protection and Family Violence Prevention Act of 1990, Pub. L. 101–630, 104 Stat. 4544, 25 U.S.C. 3201 3211.

§ 63.2 Policy.

In enacting the Indian Child Protection and Family Violence Prevention Act, the Congress recognized there is no resource more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe. The minimum standards of character and suitability of employment for individuals ensure that Indian children are protected, and the Indian child protection and family violence prevention programs will emphasize the unique values of Indian culture and community involvement in the prevention and treatment of child abuse, child neglect and family violence.

§ 63.3 Definitions.

Bureau means the Bureau of Indian Affairs of the Department of the Interior;

Child means an individual who is not married, and has not attained 18 years of age.

Child abuse includes but is not limited to any case in which a child is dead, or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, or soft tissue swelling, and this condition is not justifiably explained or may not be the product of an accidental occurrence; and any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.

Child neglect includes but is not limited to, negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened.

Crimes against persons are defined by local law. Adjudicating officers must contact local law enforcement agencies to determine if the crime for which an applicant or employee was found guilty (or entered a plea of nolo contendere or guilty) is defined as a crime against persons.

Family violence means any act, or threatened act, of violence, including any forceful detention of an individual, which results, or threatens to result, in physical or mental injury, and is committed by an individual against another individual to whom such person is, or was, related by blood or marriage or otherwise legally related, or with whom such person is, or was, residing, or with whom such person has, or had,

intimate or continuous social contact and household access.

Indian means any individual who is a member of an Indian tribe.

Indian child means any unmarried person who is under age eighteen and is either a member of an Indian tribe or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

Indian country means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof; and,

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Unless otherwise indicated, the term ''Indian country'' is used instead of ''Indian reservation'' for consistency.

Indian reservation means any Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, or lands held by incorporated Native groups, regional corporations, or village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Inter-tribal consortium means a partnership between an Indian tribe or tribal organization of an Indian tribe, and one or more Indian tribes or tribal organizations of one or more Indian tribes.

Local child protective services agency is an agency of the Federal Government, state, or Indian tribe that has the primary responsibility for child protection on any Indian reservation, or within any community in Indian country.

Local law enforcement agency is that Federal, tribal, or state law enforcement agency that has primary responsibility for the investigation of an instance of alleged child abuse within the involved Indian jurisdiction.

Must is used in place of shall and indicates a mandatory or imperative act or requirement.

Person responsible for a child's welfare is any person who has legal or other recognized duty for the care and safety of a child, and may include any employee or volunteer of a children's residential facility, and any person providing out-of-home care, education, or services to children.

Related assistance means the counseling and self-help services for abusers, victims, and dependents in family violence situations; referrals for appropriate health-care services (including alcohol and drug abuse treatment); and may include food, clothing, child care, transportation, and emergency services for victims of family violence and their dependents.

Secretary means the Secretary of the Interior.

Service means the Indian Health Service of the Department of Health and Human Services.

Shelter means the temporary refuge and related assistance in compliance with applicable Federal and tribal laws and regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence or their dependents.

Tribal organization means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided,* That in any case where a contract is let, a grant is awarded, or funding agreement is made to an organization to perform services benefitting more than one Indian tribe, the approval of

each such Indian tribe must be a prerequisite to the letting or making of such contract, grant, or funding agreement.

§ 63.4 Information collection.

The information collection requirement contained in § 63.15, § 63.33 and § 63.34 will be approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned clearance number _____.

§§ 63.5–63.9 [Reserved]

Subpart B—Minimum Standards of Character and Suitability for Employment

§ 63.10 Purpose.

The purpose of this part is to establish:

(a) Procedures for determining suitability for employment and efficiency of service as mandated by the Indian Child Protection and Family Violence Prevention Act; and

(b) *Minimum standards of character* to ensure that individuals having regular contact with or control over Indian children have not been convicted of certain types of crimes or acted in a manner that placed others at risk or raised questions about their trustworthiness.

§ 63.11 What is a determination of suitability for employment and efficiency of service?

(a) *Determinations of suitability measure the fitness or eligibility* of an applicant, volunteer, or employee for a particular position. Suitability for employment does not evaluate an applicant's education, skills, knowledge, experience, etc. Rather, it requires that the employer investigate the background of each applicant, volunteer, and employee to:

(1) Determine the degree of risk the applicant, volunteer, or employee brings to the position; and

(2) Certify that the applicant's, volunteer's, or employee's past conduct would not interfere with his/her performance of duties, nor would it create an immediate or long-term risk for any Indian child.

(b) *Efficiency of service* is the employer's verification that the applicant or employee is able to perform the duties and responsibilities of the position, and his/her presence on the job will not inhibit other employees or the agency from performing their functions.

§ 63.12 What are minimum standards of character?

Minimum standards of character are established by an employer and refer to identifiable character traits and past conduct. An employer may use character traits and past conduct to determine whether an applicant, volunteer, or employee can effectively perform the duties of a particular position without risk of harm to others. Minimum standards of character ensure that no applicant, volunteer, or employee will be placed in a position with regular contact with or control over Indian children if he/she has been found guilty of or entered a plea of nolo contendere or guilty to any offense under Federal, state, or tribal law involving crimes of violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons.

§ 63.13 What does the Indian Child Protection and Family Violence Prevention Act require of the Bureau of Indian Affairs and Indian tribes or tribal organizations receiving funds under the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act?

(a) The *Bureau of Indian Affairs* must compile a list of all authorized positions which involve regular contact with or control over Indian children; investigate the character of each individual who is employed, or is being considered for employment; and, prescribe minimum standards of character which each individual must meet to be appointed to such positions.

(b) All *Indian tribes or tribal organizations* receiving funds under the authority of the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act of 1988 must conduct a background investigation for individuals whose duties and responsibilities would allow them regular contact with or control over Indian

children, and employ only individuals who meet standards of character that are no less stringent than those prescribed for the Bureau of Indian Affairs.

§63.14 What positions require a background investigation and determination of suitability for employment or retention?

All positions that allow an applicant, employee, or volunteer regular contact with or control over Indian children are subject to a background investigation and determination of suitability for employment.

§63.15 What questions should an employer ask?

Employment applications must:

(a) Ask whether the applicant, volunteer, or employee has been arrested or convicted of a crime involving a child, violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons;

(b) Ask the disposition of the arrest or charge;

(c) Require that an applicant, volunteer or employee sign, under penalty of perjury, a statement verifying the truth of all information provided in the employment application; and

(d) Inform the applicant, volunteer or employee that a criminal history record check is a condition of employment and require the applicant, volunteer or employee to consent, in writing, to a record check.

§63.16 Who conducts the background investigation and prepares the determination of suitability for employment?

(a) The *Bureau of Indian Affairs* must use the United States Office of Personnel Management (OPM) to conduct background investigations for Federal employees. The BIA must designate qualified security personnel to adjudicate the results of background investigations.

(b) *Indian tribes and tribal organizations* may conduct their own background investigations, contract with private firms, or request the OPM to conduct an investigation. The investigation should cover the past five years of the individual's employment, education, etc.

§63.17 How does an employer determine suitability for employment and efficiency of service?

(a) *Adjudication* is the process employers use to determine suitability for employment and efficiency of service. The adjudication process protects the interests of the employer and the rights of applicants and employees. Adjudication requires uniform evaluation to ensure fair and consistent judgment.

(b) Each case is judged on its own merits. All available information, both favorable and unfavorable, must be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past.

(c) An *adjudicating official* conducts the adjudication. Each Federal agency, Indian tribe, or tribal organization must appoint an adjudicating official, who must first have been the subject of a favorable background investigation.

(1) Indian tribes and tribal organizations must ensure that persons charged with the responsibility for adjudicating employee background investigations are well-qualified and trained.

(2) Indian tribes and tribal organizations should also ensure that individuals who are not trained to adjudicate these types of investigations are supervised by someone who is experienced and receive the training necessary to perform the task.

(d) Each adjudicating official must be thoroughly familiar with all laws, regulations, and criteria involved in making a determination for suitability.

(e) The adjudicating official must review the background investigation to determine the character, reputation, and trustworthiness of the individual. At a minimum, the adjudicating official must:

(1) Review each security investigation form and employment application and compare the information provided;

(2) Review the results of written record searches requested from local law enforcement agencies, former employers, former supervisors, employment references, and schools; and

(3) Review the results of the fingerprint charts maintained by the Federal Bureau of Investigation or other law enforcement information maintained by other agencies.

(f) Relevancy is a key objective in evaluating investigative data. The adjudicating official must consider prior conduct in light of:

(1) The nature and seriousness of the conduct in question;

(2) The recency and circumstances surrounding the conduct in question;

(3) The age of the individual at the time of the incident;

(4) Societal conditions that may have contributed to the nature of the conduct;

(5) The probability that the individual will continue the type of behavior in question; and,

(6) The individual's commitment to rehabilitation and a change in the behavior in question.

§ 63.18 Are the requirements for Bureau of Indian Affairs adjudication different from the requirements for Indian tribes and tribal organizations?

Yes.

(a) In addition to the minimum requirements for background investigations found in § 63.12, *Bureau of Indian Affairs'* adjudicating officials must review the OPM National Agency Check and Inquiries which includes a search of the OPM Security/Suitability Investigations Index (SII) and the Defense Clearance and Investigations Index (DCII), and any additional standards which may be established by the BIA.

(b) *All* Bureau of Indian Affairs employees who have regular contact with or control over Indian children must be reinvestigated every five years during their employment in that or any other position which allows regular contact with or control over Indian children.

(c) *Indian tribes and tribal organizations* may adopt these additional requirements but are not mandated to do so by law.

§ 63.19 When should an employer deny employment or dismiss an employee?

(a) An employer may deny employment or dismiss an employee when an individual has been found guilty of or entered a plea of guilty or nolo contendere to any Federal, state or tribal offense involving a crime of violence, sexual assault, sexual molestation, child exploitation, sexual contact, prostitution, or crimes against persons.

(b) An employer may deny employment or dismiss an employee when an individual has been convicted of an offense involving a child victim, a sex crime, or a drug felony.

§ 63.20 What should an employer do if an individual has been charged with an offense but the charge is pending or no disposition has been made by a court?

(a) The employer may deny the applicant employment until the charge has been resolved.

(b) The employer may deny the employee any on-the-job contact with children until the charge is resolved.

(c) The employer may detail or reassign the employee to other duties that do not involve contact with children.

(d) The employer may place the employee on administrative leave until the court has disposed of the charge.

§ 63.21 Are there other factors that may disqualify an applicant, volunteer or employee from placement in a position which involves regular contact with or control over Indian children?

Yes.

(a) An applicant, volunteer, or employee may be disqualified from consideration or continuing employment if it is found that:

(1) The individual's misconduct or negligence interfered with or affected a current or prior employer's performance of duties and responsibilities.

(2) The individual's criminal or dishonest conduct affected the individual's performance or the performance of others.

(3) The individual made an intentional false statement, deception or fraud on an examination or in obtaining employment.

(4) The individual has refused to furnish testimony or cooperate with an investigation.

(5) The individual's alcohol or substance abuse is of a nature and duration that suggests the individual could not perform the duties of the position

or would directly threaten the property or safety of others.

(6) The individual has illegally used narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation.

(7) The individual knowingly and willfully engaged in an act or activities designed to disrupt government programs.

(b) An individual must be disqualified for Federal employment if any statutory or regulatory provision would prevent his/her lawful employment.

§63.22 Can an employer certify an individual with a prior conviction or substantiated misconduct as suitable for employment?

(a) The *Bureau of Indian Affairs* must use Federal adjudicative standards which allow the BIA to certify that an individual is suitable for employment in a position that does not involve regular contact with or control over Indian children. The adjudicating officer must determine that the individual's prior conduct will not interfere with the performance of duties and will not create a potential for risk to the safety and well-being of Indian children.

(b) *Indian tribes and tribal organizations* must identify those positions which permit contact with or control over Indian children and establish standards to determine suitability for employment. Those standards should then be used to determine whether an individual is suitable for employment in a position that permits contact with or control over Indian children. If not, the individual may only be placed in a position that does not permit contact with or control over Indian children.

§63.23 What rights does an applicant, volunteer or employee have during this process?

(a) The applicant, volunteer, or employee must be provided an opportunity to explain, deny, or refute unfavorable and incorrect information gathered in an investigation, before the adjudication is final. The applicant, volunteer, or employee should receive a written summary of all derogatory information and be informed of the process for explaining, denying, or refuting unfavorable information.

(b) Employers and adjudicating officials must not release the actual background investigative report to an applicant, volunteer, or employee. However, they may issue a written summary of the derogatory information.

(c) The applicant, volunteer, or employee who is the subject of a background investigation may obtain a copy of the reports from the originating (Federal, state, or other tribal) agency and challenge the accuracy and completeness of any information maintained by that agency.

(d) The results of an investigation cannot be used for any purpose other than to determine suitability for employment in a position that involves regular contact with or control over Indian children.

(e) Investigative reports contain information of a highly personal nature and should be maintained confidentially and secured in locked files. Investigative reports should be seen only by those officials who in performing their official duties need to know the information contained in the report.

§63.24 What protections must employers provide to applicants, volunteers and employees?

(a) Indian tribes and tribal organizations must comply with the privacy requirements of any Federal, state, or other tribal agency providing background investigations. Indian tribes and tribal organizations must establish and comply with personnel policies that safeguard information derived from background investigations.

(b) The Bureau of Indian Affairs must comply with all policies, procedures, criteria, and guidance contained in the Bureau of Indian Affairs Manual or other appropriate guidelines.

(c) Federal agencies exercising authority under this part by delegation from OPM must comply with OPM policies, procedures, criteria, and guidance.

§§ 63.25–63.29 [Reserved]

Subpart C—Indian Child Protection and Family Violence Prevention Program

§ 63.30 What is the purpose of the Indian child protection and family violence prevention program?

The purpose of this program is to develop tribally-operated programs to protect Indian children and reduce the incidence of family violence on Indian reservations.

§ 63.31 Can both the Bureau of Indian Affairs and tribes operate Indian child protection and family violence prevention programs?

Yes. However, tribes are encouraged to develop and operate programs to protect Indian children and reduce the incidence of family violence in Indian country.

§ 63.32 Under what authority are Indian child protection and family violence prevention program funds awarded?

The Secretary is authorized to enter into contracts with Indian tribes, tribal organizations, or tribal consortia pursuant to the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450 *et seq.*, for the development and establishment of Indian child protection and family violence prevention programs. This includes compacting with tribes under the Self-Governance program procedures.

§ 63.33 What must an application for Indian child protection and family violence prevention program funds include?

In addition to the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450 *et seq.*, contracting requirements, each application must provide the following information:

(a) The name and address of the agency or official to be responsible for the investigation of reported cases of child abuse and child neglect, the treatment and prevention of incidents of family violence, and the provision of immediate shelter and related assistance for victims of family violence and their dependents;

(b) Projected service population of the program;

(c) Projected service area of the program; and

(d) Projected number of cases per month.

§ 63.34 How are Indian child protection and family violence prevention program funds distributed?

(a) Funds will be distributed, subject to the availability of appropriations, and:

(1) In any fiscal year that the appropriation exceeds 50 percent of the level of funding authorized for this purpose by the Act, 49 percent must be distributed equally to all tribes and tribal organizations and 49 percent must be distributed on a per capita basis according to the population of children residing in the service area. Two percent of the annual appropriation will be set aside for distribution to tribes demonstrating special circumstances.

(2) In any fiscal year that the appropriation does not exceed 50 percent of the level of funding authorized for this purpose by the Act, funding must be distributed in equal amounts to all tribes. Two percent of the annual appropriation will be set aside for distribution to tribes demonstrating special circumstances.

(3) Special circumstances include but are not limited to a high incidence of child sexual abuse, a high incidence of violent crimes, a high incidence of violent crimes against women, or the existence of a significant victim population within the community.

(i) This 2 percent will be subject to discretionary distribution by the Assistant Secretary—Indian Affairs, or his or her designee. Tribes may request these funds through their respective area offices. All requests must demonstrate a high incidence of child sexual abuse, a high incidence of violent crimes, a high incidence of violent crimes against women, or the existence of a significant victim population within the community.

(ii) Special circumstances funds will remain available through the third quarter of each fiscal year. In the

fourth quarter, unallocated special circumstances funds will be redistributed as set forth in paragraphs (a)(1) and (a)(2) of this section, except that there will be no additional set aside for special circumstances.

(b) Any tribe not wishing to receive Indian child protection and family violence prevention funds must inform its respective area office in writing within 90 days after receiving notice of the allocation from the area office. Each area office may reallocate unused Indian child protection and family violence prevention program funds as provided in this section.

(c) Funds may be used as matching shares for other federally funded programs which contribute to and promote prevention of child abuse, child neglect, and family violence on Indian reservations, but may not be used to supplant funds available for the same general purposes.

(d) Any income resulting from the operation of Indian child protection and family violence prevention programs may be retained and used to promote prevention of child abuse, child neglect, and family violence on Indian reservations.

§63.35 How may Indian child protection and family violence prevention program funds be used?

Indian child protection and family violence prevention program funds may be used to:

(a) Establish child protective services programs.

(b) Establish family violence prevention and treatment programs.

(c) Develop and implement multidisciplinary child abuse investigation and prosecution programs.

(d) Provide immediate shelter and related assistance to victims of family violence and their dependents, including construction or renovation of facilities to establish family violence shelters.

(e) Purchase equipment to assist in the investigation of cases of child abuse and child neglect.

(f) Develop protocols and intergovernmental or interagency agreements among tribal, Federal, state law enforcement, courts of competent jurisdiction, and related agencies to ensure investigations of child abuse cases to minimize the trauma to the child victim, to define and specify each party's responsibilities, and to provide for the coordination of services to victims and their families.

(g) Develop child protection codes and regulations that provide for the care and protection of children and families on Indian reservations.

(h) Establish community education programs for tribal members and school children on issues of family violence, child abuse, and child neglect.

(i) Establish training programs for child protective services, law enforcement, judicial, medical, education, and related services personnel in the investigation, prevention, protection, and treatment of child abuse, child neglect, and family violence.

(j) Establish other innovative and culturally relevant programs and projects that show promise of successfully preventing and treating family violence, child abuse, and child neglect.

§63.36 What are the special requirements for Indian child protection and family violence prevention programs?

(a) Each tribe must develop appropriate standards of service, including caseload standards and staffing requirements. The following caseload standards and staffing requirements are comparable to those recommended by the Child Welfare League of America, and are included to assist tribes in developing standards for Indian child protection and family violence prevention programs:

(1) Caseworkers providing services to abused and neglected children and their families have a caseload of 20 active ongoing cases and five active investigations per caseworker.

(2) Caseworkers providing services to strengthen and preserve families with children have a caseload of 20 families. If intensive family-centered crisis services are provided, a caseload of 10 families per caseworker is recommended.

(3) It is recommended that there be one supervisor for every six caseworkers.

(b) The negotiation and award of contracts, grants, or funding agreements

under these regulations must include the following requirements:

(1) Performance of background investigations to ensure that only those individuals who meet the standards of character contained in § 63.12 are employed in positions which involve regular contact with or control over Indian children.

(2) Submission of an annual report to the contracting officer's representative which details program activities, number of children and families served, and the number of child abuse, child neglect, and family violence reports received.

(3) Assurance that the identity of any person making a report of child abuse or child neglect will not be disclosed without the consent of the individual and that all reports and records collected under these regulations are confidential and to be disclosed only as provided by Federal or tribal law.

(4) Assurance that persons who, in good faith, report child abuse or child neglect will not suffer retaliation from their employers.

§§ 63.37—63.50 [Reserved]

PART 67—PREPARATION OF A ROLL OF INDEPENDENT SEMINOLE INDIANS OF FLORIDA

Sec.
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AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2 and 9; and Pub.L. 101–277, 104 Stat. 143.

SOURCE: 59 FR 3291, Jan. 20, 1994, unless otherwise noted.

§ 67.1 Definitions.

As used in this part:

Act means the Act of Congress approved April 30, 1990, Public Law 101–277, 104 Stat. 143, which authorizes the use and distribution of funds awarded the Seminole Indians in Dockets 73, 151, and 73–A of the Indian Claims Commission.

Adopted person means a person whose natural parents' parental rights have been terminated by court order and persons other than the natural parents have exercised or do exercise parental rights with regard to the adopted person.

Applicant means a person who is making application for inclusion on the roll prepared by the Secretary pursuant to the Act of April 30, 1990, by either personally filing an application or by having a sponsor complete and file an application on his or her behalf.

Assistant Secretary means the Assistant Secretary for Indian Affairs or authorized representative.

BIA means the Bureau of Indian Affairs, Department of the Interior.

Commissioner means the Commissioner of Indian Affairs or authorized representative.

Director means the Area Director, Eastern Area Office, Bureau of Indian Affairs or authorized representative.

Lineal descendant(s) means those persons who are the issue of the ancestor through whom enrollment rights are claimed; namely, the children, grandchildren, etc. It does not include collateral relatives such as brothers, sisters, nieces, nephews, cousins, etc., or adopted children, adopted grandchildren, etc.

Living means born on or before and alive on the date specified.

Secretary means the Secretary of the Interior or authorized representative.

Sponsor means any person who files an application for enrollment or an appeal on behalf of another person.

Superintendent means the Superintendent, Seminole Agency, Bureau of Indian Affairs or authorized representative.

§ 67.2 Purpose.

The regulations in this part govern the compilation of a roll of persons who meet the requirements specified in

section 7 of the Act who will be eligible to share in the distribution of a portion of the judgment funds awarded the Seminole Indians in Dockets 73, 151, and 73–A of the Indian Claims Commission.

§ 67.3 Information collection.

The information collection requirement contained in this part does not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

§ 67.4 Qualifications for enrollment and the deadline for filing application forms.

(a) The roll shall contain the names of persons of Seminole Indian descent who:

(1) Were born on or before, and living on April 30, 1990;

(2) Are listed on or who are lineal descendants of persons listed on the annotated Seminole Agency Census of 1957 as Independent Seminoles; and

(3) Are not members of an Indian tribe recognized by the Secretary on the most recent list of such Indian tribes published in the FEDERAL REGISTER.

(b) To qualify for enrollment, all persons must file application forms with the Superintendent, Seminole Agency, Bureau of Indian Affairs, 6075 Stirling Road, Hollywood, Florida 33024 by June 19, 1994. An application filed after June 19, 1994 will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

§ 67.5 Notices.

(a) The Director shall give notice to all Area Directors of the BIA and all Superintendents within the jurisdiction of the Director of the preparation of the roll for public display in BIA field offices. Notices shall be placed for public display in community buildings, tribal buildings and Indian centers.

(b) The Superintendent shall, on the basis of available residence data, publish, and republish when advisable, notices of the preparation of the roll in appropriate localities utilizing media suitable to the circumstances.

(c) Notices shall advise of the preparation of the roll and the relevant procedures to be followed, including the qualifications for enrollment and the deadline for filing application forms to be eligible for enrollment. The notices shall also state how and where application forms may be obtained, as well as the name, address, and telephone number of a person who may be contacted for further information.

§ 67.6 Application forms.

(a) Application forms to be filed by or for applicants for enrollment shall be furnished by the Area Director, Superintendent, or other designated persons upon written or oral request. Each person furnishing application forms shall keep a record of the names of individuals to whom forms are given, as well as the control numbers of the forms and the date furnished. Instructions for completing and filing application forms shall be furnished with each form. The form shall indicate prominently the deadline date for filing application forms.

(b) Among other information, each application form shall contain:

(1) Certification as to whether the application form is for a natural child or an adopted child of the parent through whom eligibility is claimed.

(2) If the application form is filed by a sponsor, the name and address of the sponsor and the sponsor's relationship to the applicant.

(3) A control number for the purpose of keeping a record of forms furnished to interested individuals.

(4) Certification that the information given on the application form is true to the best of the knowledge and belief of the person filing the application. Criminal penalties are provided by statute for knowingly filing false information in such applications (18 U.S.C. 1001).

(5) An election by the applicant as to whether the applicant, if determined to meet the qualifications for enrollment, wishes to share in the per capita payment.

(c) Sponsors may file application forms on behalf of other persons, but may not file elections to share in the per capita payment.

(1) The election to share in the per capita payment shall be made as follows:

(i) If the applicant is a competent adult, the election shall be made by the applicant.

(ii) If the applicant is not a competent adult, the election shall be made by the applicant's legal guardian.

(iii) If the applicant is a minor, the election shall be made by the applicant's parent or legal guardian.

(2) When an application is filed by a sponsor, the Superintendent shall:

(i) Furnish the sponsor a copy of the application for forwarding to the applicant or his/her guardian for completion of the election to share in the per capita payment; and

(ii) Make a reasonable effort to furnish a copy of the application directly to the applicant or his/her guardian for completion of the election to share in the per capita payment.

(d) Every applicant or sponsor shall furnish the applicant's mailing address on the application form. Thereafter, the applicant or sponsor shall promptly notify the Superintendent of any change in address, giving appropriate identification of the applicant. Otherwise, the mailing address as stated on the application form shall be accepted as the address of record for all purposes under the regulations in this part.

§ 67.7 Filing of application forms.

(a) Application forms filed by mail must be postmarked no later than midnight on the deadline date specified in § 67.4(b). Where there is no postmark date showing on the envelope or the postmark date is illegible, application forms mailed from within the United States, including Alaska and Hawaii, received more than 15 days after the specified deadline, and application forms mailed from outside of the United States received more than 30 days after the specified deadline in the office of the Superintendent, will be rejected for failure to file in time.

(b) Application forms filed by personal delivery must be received in the office of the Superintendent no later than close of business on the deadline date specified in § 67.4(b).

(c) If the deadline date for filing application forms falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the deadline will be the next working day thereafter.

§ 67.8 Burden of proof.

The burden of proof rests upon the applicant to establish eligibility for enrollment. Documentary evidence such as birth certificates, death certificates, baptismal records, copies of probate findings, or affidavits may be used to support claims of eligibility for enrollment. Records of the BIA may be used to establish eligibility.

§ 67.9 Action by Superintendent.

(a) The Superintendent shall notify each individual applicant or sponsor, as applicable, upon receipt of an application. The Superintendent shall consider each application and all documentation. Upon determining an individual's eligibility, the Superintendent shall notify the individual; the parent or guardian having legal custody of a minor or incompetent adult; or the sponsor, as applicable.

(1) Written notification of the Superintendent's decision shall be sent to the applicant by certified mail, for receipt by the addressee only, return receipt requested.

(2) If a decision by the Superintendent is sent out of the United States, registered mail will be used. If a certified or registered notice is returned as ''Unclaimed,'' the Superintendent shall remail the notice by regular mail together with an acknowledgment of receipt form to be completed by the addressee and returned to the Superintendent. If the acknowledgment of receipt is not returned, computation of the period specified for changes in election and for appeals shall begin on the date the notice was remailed. A certified or registered notice returned for any reason other than ''Unclaimed'' need not be remailed.

(3) If an individual files an application on behalf of more than one person, one notice of eligibility or adverse action may be addressed to the person who filed the applications. However, the notice must list the name of each person to whom the notice is applicable. Where an individual is represented by a sponsor, notification to the sponsor of eligibility or adverse action shall be considered notification to the individual.

(b) On the basis of an applicant's election with regard to whether he or

she wishes to share in the per capita payment, the Superintendent's decision shall also state whether the applicant's name will be included on the per capita payment roll. If no election has been made by the applicant, parent, or legal guardian on the application form, the individual applicant's name will not be included on the per capita payment roll.

(1) The eligible individual will have 30 days from notification of his or her eligibility in which to request a change in the election of whether to share in the per capita payment. Computation of the 30-day period will be in accordance with §67.9(a)(2) and §67.9(d). Upon written request received within the 30-day period, to avoid hardship or gross injustice, the Superintendent may grant an applicant additional time, not to exceed 30 days, in which to submit a request for a change in election.

(2) A change in the election of whether to share in the per capita payment can only be made by competent adult applicants; by the legal guardian of an incompetent adult; or, in the case of a minor, by the minor's parent or legal guardian.

(c) If the Superintendent determines that an applicant is not eligible for enrollment as an Independent Seminole Indian of Florida, the Superintendent shall notify the applicant of the decision and shall fully explain the reasons for the adverse action and explain the rejected applicant's right to appeal to the Area Director. The decision of the Area Director shall be final and conclusive.

(d) Except as provided in paragraph (a)(2) of this section, a notice of adverse action concerning an individual's enrollment eligibility or the inclusion or exclusion of an individual's name on the per capita payment roll is considered to have been made, and computation of the period for appeal shall begin on the earliest of the following dates:

(1) Delivery date indicated on the return receipt;

(2) Date of acknowledgment of receipt;

(3) Date of personal delivery; or

(4) Date of return by the post office of an undelivered certified or registered letter.

(e) To avoid hardship or gross injustice, the Area Director or the Superintendent may waive technical deficiencies in application forms or other submittals. Failure to file by the deadline date does not constitute a technical deficiency.

§67.10 Appeals.

(a) Appeals from or on behalf of applicants who have been rejected for enrollment must be in writing and must be filed pursuant to part 62 of this chapter. When the appeal is on behalf of more than one person, the name of each person must be listed in the appeal.

(b) A copy of part 62 of this chapter shall be furnished with each notice of adverse action. All sections of part 62 shall be applicable to appeals filed under this part except §§62.10, 62.11 and 62.12.

§67.11 Decision of the Area Director on appeals.

(a) The Area Director will consider the record as presented, together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision.

(b) The decision of the Area Director on an appeal shall be final and conclusive, and written notice, which shall state that the decision is final and conclusive, shall be given to the individual applicant, parent, legal guardian, or sponsor, as applicable.

(c) If an individual files an appeal on behalf of more than one applicant, one notice of the Area Director's decision may be addressed to the person who filed the appeal. The Area Director's decision must list the name of each person to whom the decision is applicable. Where an individual applicant is represented by a sponsor, notification to the sponsor of the Area Director's decision is sufficient.

(d) Written notice of the Area Director's decision on the appeal shall be sent to the applicant by certified mail, to be received by the addressee only, return receipt requested.

(1) On the basis of the individual's election with regard to whether he or she wishes to share in the per capita payment, the Area Director's decision

shall also state whether the individual's name will be included on the per capita payment roll. If no election is made by the individual applicant, parent, or legal guardian, the individual's name will not be included on the per capita payment roll.

(2) The eligible individual will have 30 days from notification of his or her eligibility in which to request a change in the election of whether to share in the per capita payment. Computation of the 30-day period will be in accordance with § 67.9(a)(2) and § 67.9(d). Upon written request received within the 30-day period, to avoid hardship or gross injustice, the Area Director may grant additional time, not to exceed 30 days, in which to submit a request for a change in election.

(3) The change in the election of whether to share in the per capita payment can only be made by adult applicants, or by the legal guardian of an incompetent adult, or in the case of minors, by the parents or legal guardian of such minors.

§ 67.12 Exhaustion of administrative remedies.

The decision of the Area Director on appeal, which shall be final for the Department, is subject to judicial review under 5 U.S.C. 704.

§ 67.13 Preparation, certification and approval of the roll.

(a) The Superintendent shall prepare a minimum of three (3) copies of the roll of those persons determined to be qualified for enrollment as an Independent Seminole Indian of Florida. The roll shall contain for each person a roll number or identification number, name, address, sex, date of birth, date of death (when applicable), and the name and relationship of the ancestor on the annotated Seminole Agency Census of 1957 through whom eligibility for enrollment was established.

(b) A certificate shall be attached to the roll by the Superintendent certifying that to the best of his or her knowledge and belief, the roll contains only the names of those persons who were determined to meet the qualifications for enrollment.

(c) The Area Director shall approve the roll.

§ 67.14 Preparation of a per capita payment roll.

(a) The Superintendent shall, based on the roll approved under § 67.12(c), prepare a per capita payment roll. The payment roll shall be comprised of those persons whose names appear on the approved roll and who have elected to share in the per capita payment.

(b) The per capita payment roll shall contain for each person a roll number or identification number, name, and address.

(c) The Area Director shall authorize the distribution of the judgment funds to those persons named on the per capita payment roll.

§ 67.15 Special instructions.

To facilitate the work of the Superintendent and Area Director, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this part.

PART 75—REVISION OF THE MEMBERSHIP ROLL OF THE EASTERN BAND OF CHEROKEE INDIANS, NORTH CAROLINA

Sec.

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75.17 Relinquishment of membership.
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AUTHORITY: Sec. 2, 71 Stat. 374.

SOURCE: 24 FR 201, Jan. 8, 1959, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 75.1 Definitions.

As used in this part:

(a) *Band* means the Eastern Band of Cherokee Indians in North Carolina.

(b) *Reservation* means the lands of the Eastern Band of Cherokee Indians in the counties of Jackson, Swain, Graham, Cherokee and Haywood in North Carolina.

(c) *Tribal Council* means the Tribal Council of the Eastern Band of Cherokee Indians in North Carolina.

(d) *Announcement* means the announcement of the revision of the membership roll issued as required in § 75.3.

(e) *Tribal Enrollment Office* means the Tribal Enrollment Clerk working in concert with the Enrollment Committee.

(f) *Tribal Enrollment Clerk* means the individual working in the Tribal Enrollment Office.

(g) *Enrollment Committee* means the three individuals appointed by the Tribal Council in accordance with § 75.12.

[24 FR 201, Jan. 8, 1959, as amended at 25 FR 2516, Mar. 25, 1960; 38 FR 9998, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.2 Purpose.

The regulations in this part are to govern the revision, as authorized by the Act approved August 21, 1957 (71 Stat. 374), of the membership roll of the Eastern Band of Cherokee Indians, North Carolina, prepared and approved in accordance with the Act of June 4, 1924 (43 Stat. 376), and the Act of March 4, 1931 (46 Stat. 1518).

§ 75.3 Announcement of revision of roll.

When the Tribal Council has authorized the expenditure of tribal funds to supply sufficient staff to perform the work necessary to revise the membership roll of the Band and such staff has been employed and when the application forms and other necessary documents have been devised and printed, the Principal Chief, or in his absence the Vice Chief or the Chairman of the Tribal Council shall announce that a revision of the membership roll of the Band shall commence on a specified date. The date specified shall be not less than 15 days nor more than 30 days from the date of issuance of the announcement. A press release should be prepared announcing the date the revision of the roll shall begin, together with other pertinent information such as the membership requirements and where application forms may be obtained. The press release should be distributed to all newspapers and radio stations within the region of the Reservation with a request that it be given wide publicity. Copies of the press release should also be posted in the Agency Office and at various other public places throughout the Reservation as well as in Post Offices of the towns adjacent to the Reservation.

§ 75.4 Basic membership roll.

All persons whose names appear on the roll of the Eastern Band of Cherokee Indians of North Carolina, prepared and approved pursuant to the act of June 4, 1924 (43 Stat. 376), and the act of March 4, 1931 (46 Stat. 1518), shall be members of the Band.

§ 75.5 Removal of deceased persons from the roll.

The name of any person who was not alive as of midnight August 21, 1957, shall be stricken from the basic membership roll by the Tribal Enrollment Office upon receipt of a death certificate or other evidence of death acceptable to the Tribal Enrollment Office.

[38 FR 9998, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.6 Additions to the roll.

There shall be added to the roll of the Band the names of persons living on August 21, 1957, who meet the following qualifications:

(a) Persons born during the period, beginning on or after June 4, 1924, and ending midnight August 21, 1957, who are direct descendants of persons whose names appear on the roll prepared and approved pursuant to the act of June 4, 1924 (43 Stat. 376), and the act of March 4, 1931 (46 Stat. 1518); provided, such persons:

(1) Who applied for membership before August 14, 1963 possess at least 1/32 degree of Eastern Cherokee Indian blood, and those persons who apply for membership on or after August 14, 1963, possess at least 1/16 degree Eastern Cherokee Indian blood, except that persons who also possess Indian blood of

another tribe shall not be enrolled if they are enrolled as members of the other tribe.

(2) Have themselves or have parents who have maintained and dwelt in a home at sometime during the period from June 4, 1924, through August 21, 1957, on the lands of the Eastern Band of Cherokee Indians in the counties of Swain, Jackson, Graham, Cherokee and Haywood in North Carolina, except that this specific part of this section shall not apply to those persons and members of their families who were temporarily away from the Reservation due to one or both parents being in the U.S. Armed Services or who were employed by the U.S. Government and neither shall it apply to those individuals who were in mental or penal institutions during this period of time.

(3) Have filed an application for enrollment with the Band in accordance with the procedures set forth in this part.

(b) A child born out of wedlock to a mother who is either an enrolled member of the Band, or who meets the qualifications for enrollment as a member, may be enrolled if such child otherwise meets the requirements for enrollment as set forth in this section.

(c) A child born out of wedlock to a mother who is not a member of the Band may be enrolled if the mother files with the Enrollment Committee proof established in accordance with the laws of North Carolina as to the paternity of the child and the person adjudged to be the father is either an enrolled member of the Band, or meets the requirements for enrollment as a member, and if the child otherwise meet the requirements for enrollment as set forth in this section.

[24 FR 201, Jan. 8, 1959, as amended at 25 FR 2516, Mar. 25, 1960; 28 FR 8314, Aug. 14, 1963. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.7 Applications for enrollment.

Each adult person who believes he meets the requirements for enrollment established herein may submit to the Tribal Enrollment Office an application for enrollment as a member of the Eastern Band of Cherokee Indians.

[38 FR 9998, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.8 Applications for minors and incompetents.

Applications for enrollment of minors may be filed by the parent, next of kin, recognized guardian, or other person responsible for their care. Applications for enrollment of persons known to be in mental or penal institutions may be filed by the Principal Chief of the Eastern Band of Cherokee.

[38 FR 9998, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.9 Application form.

The form of application for enrollment will be prepared by the Tribal Enrollment Office and, in addition to whatever information the Enrollment Committee may deem necessary, shall contain the following:

(a) The name and address of the applicant. If the application is filed on behalf of a minor, the name and address of the person filing the application and his relationship to the minor.

(b) The name, relationship, tribe and roll number of the ancestor or ancestors through whom enrollment rights are claimed, and whether applicant is enrolled with another tribe.

(c) The date of death of such ancestor, if deceased.

[38 FR 9998, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.10 Where application forms may be obtained.

Application forms will be supplied by the Tribal Enrollment Office of the Eastern Band of Cherokee Indians, Council House, Cherokee, N.C. 28719, upon request, either in person or by mail.

[38 FR 9998, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.11 Proof of relationship.

If the applicant's parents or other Eastern Cherokee ancestors through whom the applicant claims enrollment rights are unknown to the Tribal Enrollment Office, the Tribal Enrollment Office may request the applicant to furnish such additional information and evidence as it may deem necessary to determine the applicant's eligibility

for enrollment. Failure of the applicant to furnish the information requested may be deemed sufficient cause for rejection.

[38 FR 9998, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§75.12 Enrollment Committee.

The Tribal Council shall appoint either from within or without the membership of the Council, but not from without the membership of the Band, a committee of three (3) persons to serve as the Enrollment Committee. The Enrollment Committee shall review all applications for enrollment filed in accordance with the existing regulations, and shall determine the qualifications of the applicant for enrollment with the Band. The Enrollment Committee may perform such other functions relating to the enrollment and membership in the Band as the Tribal Council may from time to time direct.

[38 FR 9999, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§75.13 Tenure of Enrollment Committee.

The members of the Enrollment Committee shall be appointed to serve a term of office of 2 years by each newly elected Tribal Council.

[38 FR 9999, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§75.14 Appeals.

Any person whose application for enrollment has been rejected by the Enrollment Committee shall have the right to appeal to the Tribal Council from the determination made by the Enrollment Committee: *Provided*, That such appeal shall be made in writing and shall be filed in the office of the Principal Chief for presentation to the Tribal Council within sixty (60) days from the date on which the Enrollment Committee issues notice to the applicant of his rejection. The applicant may submit with his appeal any additional data to support his claim to enrollment not previously furnished. The decision of the Tribal Council as to whether the applicant meets the requirements for enrollment set forth in this part shall be final. The Tribal Council shall review no applications for enrollment except in those cases where the rejected applicant appeals to the Council in writing from the determination made by the Enrollment Committee.

[38 FR 9999, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§75.15 Current membership roll.

The membership roll of the Eastern Band of Cherokee Indians shall be kept current by striking therefrom the names of persons who have relinquished their membership in the Band as provided in §75.17 and of deceased persons upon receipt of a death certificate or other evidence of death acceptable to the Tribal Enrollment Office, and by adding thereto the names of individuals who meet the qualifications and are accepted for membership in the Band as set forth in this part.

[38 FR 9999, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§75.16 Eligibility for enrollment of persons born after August 21, 1957.

(a) Persons possessing one-sixteenth or more degree Eastern Cherokee Indian blood and born after August 21, 1957, may be enrolled in either of the following manners:

(1) An application to have the person enrolled must be filed by or on behalf of the person by the parent or recognized guardian or person responsible for his care, which application shall be accompanied by the applicant's birth certificate or by other evidence of eligibility of the applicant for enrollment that the Tribal Enrollment Office may require.

(2) In the absence of such application within 6 months after a person's birth, the Tribal Enrollment Office shall be authorized and encouraged to obtain evidence relating to the eligibility of the person for enrollment in the Eastern Band, and present an application in his behalf to the Enrollment Committee which may proceed to enroll the person if the evidence submitted meets the criteria.

(b) A person adopted in accordance with applicable laws by either tribal

members or nonmembers, shall be considered for enrollment as a tribal member if the person otherwise meets the requirements for enrollment.

(c) A person born to an enrolled member of the Band and an enrolled member of another Tribe, and said person is enrolled in the other Tribe, may be transferred from the rolls of the other and added to the rolls of the Eastern Band if he meets the general requirements for enrollment and, in addition:

(1) A death certificate or other acceptable evidence of the death of the parent enrolled in the other Tribe is received and the surviving parent who is a member of the Eastern Band makes application for enrollment by way of transfer.

(2) Upon receipt of divorce documents in the Tribal Enrollment Office, there is evidence of custody of the minors being awarded to the parent who is a member of the Band and the parent awarded custody makes application for enrollment of the minors with the Eastern Band by way of transfer.

(d) In order for a child to be enrolled under paragraph (b) or (c) of this section, either:

(1) An application to have the child enrolled must be filed on behalf of the child by the parent or recognized guardian or person responsible for his care, which application shall be accompanied by the child's birth certificate or by other evidence as to the eligibility of the child for enrollment as the Enrollment Committee may require, which application must be filed within one year from the date of birth of such child, or

(2) In the absence of such application, the Tribal Enrollment Committee may on its own motion, proceed to enroll any eligible child upon receipt by it of such evidence as shall satisfy the Committee as to the eligibility of the child to be enrolled, within one year from date of birth of such child.

[28 FR 8315, Aug. 14, 1963, as amended at 29 FR 9326, July 8, 1964; 38 FR 9999, Apr. 23, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.17 Relinquishment of membership.

Any member of the Eastern Band of Cherokee Indians may relinquish his membership in the Band by filing notice in writing that he no longer desires to be enrolled as a member of the Band. On receipt of such notice the name of the members shall be stricken from the roll and he shall no longer be considered as a member of the Band and shall not be entitled to share in any use or in any distribution of tribal assets which may be made in the future to the enrolled members of the Band.

§ 75.18 Adoption.

The Tribal Council of the Eastern Band of Cherokee Indians shall be empowered to enact ordinances governing the adoption of new members.

[39 FR 43391, Dec. 13, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.19 Distribution of judgment funds.

The membership roll of the Eastern Band of Cherokee Indians of North Carolina will be brought up to date as of October 10, 1974, to serve as the basis for distributing certain judgment funds awarded to the Band in Indian Claims Commission dockets 282–A through L.

(a) Filing of and action on applications shall be in accordance with regulations in this part 75, except as otherwise provided in paragraphs (b) through (g) of this section.

(b) In lieu of notice provisions contained in § 75.3, the Commissioner of Indian Affairs or his authorized representative shall provide notice of the bringing up to date of the membership roll through publication of these amended regulations in the FEDERAL REGISTER and through appropriate press releases and other public notices.

(c) Application forms may be obtained from the Tribal Enrollment Office of the Eastern Band of Cherokee Indians, Council House, Cherokee, North Carolina 28719. Completed applications must be received by the Tribal Enrollment Office no later than midnight January 8, 1975.

(d) Requests for applications for enrollment in the Band received after midnight of the deadline date will not be furnished until after the funds have been distributed.

(e) In lieu of the procedures given in § 75.14, appeals from rejected applicants must be in writing and filed pursuant to part 62 of this subchapter, a copy of

which shall be furnished with each notice of rejection.

(f) The Tribal Council and the Superintendent shall attach separate statements to the roll certifying that to the best of their knowledge and belief, the roll contains only the names of those persons who were determined to meet the requirements for enrollment. The roll shall then be submitted through the Area Director to the Commissioner for approval.

(g) To facilitate the work of the Tribal Enrollment Committee the Commissioner may issue special instructions not inconsistent with the regulations in this part 75.

[39 FR 43391, Dec. 13, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982]

PART 81—TRIBAL REORGANIZATION UNDER A FEDERAL STATUTE

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AUTHORITY: 25 U.S.C. 473a, 476, 477, and 503.

SOURCE: 46 FR 1670, Jan. 7, 1981, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 81.1 Definitions.

As used in this part:

(a) *Adult Indian* means any Indian as defined in paragraph (i) of this section who has attained the age of 18 years.

(b) *Amendment* means any modification, change, or total revision of a constitution or charter.

(c) *Authorizing Officer* means the Bureau of Indian Affairs official having authority to authorize the calling of a Secretarial election.

(d) *Cast ballot* means an official ballot that is cast in the proper manner at the proper time by a duly registered voter. A ballot is cast by duly placing it in the ballot box or, in the case of absentee voting, when the ballot is duly received through the mail by the election board.

(e) *Charter* means the charter of incorporation the Secretary may issue to a reorganized tribe pursuant to Federal Statute.

(f) *Commissioner* means the Commissioner of Indian Affairs or his/her authorized representative.

(g) *Constitution* or *Constitution and Bylaws* means the written organizational framework of any tribe reorganized pursuant to a Federal Statute for the exercise of governmental powers.

(h) *Federal Statute* means one of the following: (1) The Act of June 18, 1934, 48 Stat. 984, as amended (Indian Reorganization Act); (2) the Act of June 26, 1936, 49 Stat. 1967 (Oklahoma Indian Welfare Act); or (3) the Act of May 1, 1936, 49 Stat. 1250 (Alaska Native Reorganization Act).

(i) *Indian* means: (1) All persons who are members of those tribes listed or eligible to be listed in the FEDERAL REGISTER pursuant to 25 CFR 83.6(b) as recognized by and receiving services from the Bureau of Indian Affairs; provided, that the tribes have not voted to exclude themselves from the Act of June 18, 1934, 43 Stat. 984, as amended; and (2) any person not a member of one of the listed or eligible to be listed tribes who possesses at least one-half degree of Indian blood.

(j) *Invalid ballot* means an official cast ballot discovered at the time the votes are counted which does not comply with the requirements for voting or is not an official ballot. An invalid ballot is not to be counted for determining the number of cast ballots.

(k) *Member* means any Indian who is duly enrolled in a tribe who meets a tribe's written criteria for membership or who is recognized as belonging to a

tribe by the local Indians comprising the tribe.

(l) *Mutilated ballot* means an official ballot that has been damaged to the extent that it is not possible to determine the choice the voter intended to make. There are two kinds of mutilated official ballots:

(1) A ballot that is mutilated and not cast. In this case, the mutilated ballot may be exchanged for a new one. If the need arises to exchange a mutilated absentee ballot, no additional time will be provided for the new ballot to be received by the election board.

(2) A ballot that is mutilated and cast. A mutilated cast ballot is to be counted in the same manner as a spoiled cast ballot.

(m) *Officer in Charge* means the Superintendent, Administrative Officer, or other official of the local unit of the Bureau of Indian Affairs (or a Bureau employee that such person might designate) having administrative jurisdiction over a tribe.

(n) *Official ballot* means a ballot prepared by the Bureau of Indian Affairs for use in an election pursuant to this part. It is possible that an official ballot may be found to be either spoiled or mutilated at the time the votes are counted.

(o) *Registration* means the act whereby persons, who are eligible to vote, become entitled or qualified to cast ballots by having their names placed on the list of persons who will be permitted to vote.

(p) *Reorganized tribe* means a tribe whose members have adopted a constitution pursuant to a Federal Statute.

(q) *Reservation* means any area established by treaty, Congressional Act, Executive Order, or otherwise for the use or occupancy of Indians.

(r) *Revocation* means that act whereby the adult members of a tribe vote to abandon their constitutional form of government as opposed to their voting to amend or totally revise it.

(s) *Secretarial election* means an election held within a tribe pursuant to regulations prescribed by the Secretary as authorized by Federal Statute (as distinguished from *tribal* elections which are conducted under tribal authority. (See *Cheyenne River Sioux Tribe* v. *Andrus,* 566 F. 2d 1085 (8th Cir., 1977), *cert. denied* 439 U.S. 820 (1978)).

(t) *Secretary* means the Secretary of the Interior or his/her authorized representative.

(u) *Spoiled ballot* means an official ballot that has been marked in such a way that it is not possible to determine the intent of the voter, a ballot that has not been marked at all, or one that has been marked so as to violate the secrecy of the ballot. There are two kinds of spoiled official ballots:

(1) A ballot that is spoiled and not cast. In this case, the spoiled ballot may be exchanged for a new one. If the need arises to exchange a spoiled absentee ballot, no additional time will be provided for the new ballot to be received by the election board.

(2) A ballot that is spoiled and cast. A spoiled cast ballot is to be counted in tabulating the total votes cast in conjunction with determining whether the required percentage of the qualified voters has participated in the election.

(v) *Tribal government* means that entity established pursuant to a tribal constitution as empowered to speak for the tribe or in the absence thereof any group or individual that is recognized by the tribal members as empowered to speak for the tribe.

(w) *Tribe* means: (1) Any Indian entity that has not voted to exclude itself from the Indian Reorganization Act and is included, or is eligible to be included, among those tribes, bands, pueblos, groups, communities, or Alaska Native entities listed in the FEDERAL REGISTER pursuant to § 83.6(b) of this chapter as recognized and receiving services from the Bureau of Indian Affairs; and (2) any group of Indians whose members each have at least one-half degree of Indian blood for whom a reservation is established and who each reside on that reservation. Such tribes may consist of any consolidation of one or more tribes or parts of tribes.

(x) *Voting district* means a geographical area established to facilitate a tribal election process.

§ 81.2 Purpose and scope.

(a) The purpose of this part is to provide uniformity and order in:

(1) Holding Secretarial elections for voting on proposed constitutions when tribes wish to reorganize,

(2) Adopting constitutional amendments,

(3) Ratifying and amending charters,

(4) Revoking constitutions, and

(5) Facilitating the calling of such elections by the Secretary under provisions of a Federal Statute.

(b) This part may also be used as a guideline by tribes wishing to hold constitutional elections that are not held pursuant to a Federal Statute.

(c) Where a discrepancy might appear to exist between these regulations and a specific requirement of the statute governing the reorganization of a tribe or ratification and amendment of charters, the regulations shall be interpreted to conform with the statute.

(d) As much as possible, Secretarial elections shall be scheduled so as to avoid their being held at the same time as *tribal* elections in order to avoid the confusion that results from different requirements for each kind of election.

§81.3 Group eligibility.

(a) No tribe which has voted to exclude itself from the provisions of the Indian Reorganization Act, or is otherwise precluded by law, may be reorganized under a Federal Statute. Tribes wishing to reorganize or a reorganized tribe seeking to amend its constitution and bylaws or wishing to vote to revoke such document shall do so under the regulations in this part.

(b) Charters issued to reorganized tribes shall be ratified or amended under the regulations in this part.

§81.4 Assistance from the Department of the Interior.

Representatives of the Department of the Interior will cooperate with and offer advice and assistance (including the proposing of amendments), to any tribe in drafting a constitution and bylaws, an amendment, a charter or charter amendment, or in revocation of constitutions. Any payments that might be necessary to non-Bureau staff assisting in the conduct of the election shall be made from tribal funds.

§81.5 Request to call election.

(a) The Secretary shall authorize the calling of an election to adopt a constitution and bylaws or to revoke a constitution and bylaws, upon a request from the tribal government.

(b) The Secretary shall authorize the calling of an election to adopt a constitution and bylaws pursuant to a Federal Statute upon receipt of a petition bearing the signatures of at least 60 percent of the tribe's adult members.

(c) The Secretary shall authorize the calling of an election to ratify a charter at the time the charter is issued, but he/she may issue a charter to a reservation-based tribe only upon petition by at least one-third of the adult members of the tribe. No ratification, however, shall be valid unless the tribe has a constitution adopted and approved pursuant to the relevant Federal Statute.

(d) The Secretary shall authorize the calling of an election on the adoption of amendments to a constitution and bylaws or a charter when requested pursuant to the amendment article of those documents. The election shall be conducted as prescribed in this part unless the amendment article of the constitution and bylaws or the charter provides otherwise, in which case the provisions of those documents shall rule where applicable.

(e) If the amendment provisions of a tribal constitution or charter have become outdated and amendment can not be effected pursuant to them, the Secretary may authorize an election under this part to amend the documents when the recognized tribal government so requests.

(f) Any authorization not acted upon within 90 days (tribes in Alaska shall be granted 120 days) from the date of issuance will be considered void. Notification of the election date as provided for in §81.14 shall constitute the action envisioned in this section. Extension of an authorization may be granted upon a valid and reasonable request from the election board. Copies of authorizations shall be furnished the requesting tribe or petitioners.

(g) In those instances where conflicting proposals to amend a single constitutional or charter provision are submitted, that proposal first received

by the officer in charge, if found valid, shall be placed before the voters before any consideration is given other proposals. Other proposals shall be considered in order of their receipt; provided, they are resubmitted following final action on the initial submission. This procedure shall also apply in those instances where new or revised constitutions are at issue.

§ 81.6 Entitlement to vote.

(a) If the group is a tribe, or tribes, of a reservation and is acting to effect reorganization under a Federal Statute for the first time:

(1) Any duly registered adult member regardless of residence shall be entitled to vote on the adoption of a constitution and bylaws.

(2) Duly registered adult nonresident members and ill or physically disabled registered adult resident members may vote by absentee ballot (see § 81.19).

(b) If the group is composed of the adult Indian residents of a reservation:

(1) Any adult duly registered member physically residing on the reservation shall be entitled to vote.

(2) Absentee voting shall be permitted only for duly registered residents temporarily absent from the reservation, ill, or physically disabled.

(c) If the group is a tribe, or tribes, without a reservation as defined in this part, any duly registered member shall be entitled to vote on the adoption of a constitution and bylaws by either arriving at a polling place or by requesting, properly completing, and timely casting an absentee ballot as determined by the election board pursuant to the relevant Federal Statute; provided, that outside of Alaska and Oklahoma, a reservation shall be established for the tribe before it becomes entitled to vote on the adoption of a constitution.

(d) For a reorganized tribe to amend its constitution and bylaws, only members who have duly registered shall be entitled to vote; provided, that registration is open to the same class of voters that was entitled to vote in the Secretarial election that effected its reorganization, unless the amendment article of the existing constitution provides otherwise.

(e) For a reorganized tribe to revoke its constitution and bylaws, only members who have duly registered shall be entitled to vote; provided, that registration is open to the same class of voters as was entitled to vote in the Secretarial election that effected its reorganization, unless the amendment article of the existing constitution provides otherwise.

(f) For a reorganized tribe to ratify a charter or to adopt a charter amendment, any adult member who has duly registered shall be entitled to vote, provided that if the tribe is of a reservation, only duly registered members physically residing on the reservation shall be entitled to vote.

§ 81.7 Adoption, ratification, or revocation by majority vote.

Except as it may be further limited by this part, a contitution and bylaws, amendments thereto, or charter and charter amendments shall be considered adopted, ratified, or revoked if a majority of those actually voting are in favor of adoption, ratification, or revocation. The total vote cast, however, must be at least 30 percent of those entitled to vote, unless, with regard to amendments, the constitution provides otherwise. The names of persons appearing on the registration list who have not reached eighteen years of age by the date of the election, shall be removed from the list of registered voters when determining whether the required percentage of participation has been achieved. Unless the existing constitution or charter provides otherwise, none of the actions cited in this section shall become effective until they are approved by the Secretary. The validity of any charter ratification shall be dependent upon the tribe first having reorganized. Duly ratified charters shall be revoked or surrendered only by Act of Congress.

§ 81.8 Election board.

(a) There shall be an election board consisting of the officer in charge acting as chairman and at least two representatives of the tribal governing body or an authorized representative committee. Where such persons may be unwilling or unable to serve, the chairman shall select at least two adult

members of the tribe to serve. In addition, the officer in charge may appoint an interpreter and as many clerks and poll watchers as he/she deems necessary, but they shall not be members of the board.

(b) It shall be the duty of the board to conduct elections in compliance with the procedures described in this part and in particular:

(1) To see that the name of each person offering to vote is on the official list of registered voters;

(2) To keep the ballot boxes locked at all times except when ballots are being counted;

(3) To see that ballots are cast only by registered voters and that the voting list is checked to indicate this;

(4) To begin to count the regularly cast ballots immediately after the close of the polls and then the absentee ballots, pursuant to §81.21;

(5) To post and certify the election returns;

(6) To return the following to the officer in charge:

(i) The ballots (in marked and locked boxes);

(ii) All unused ballots; and

(iii) The completed Certificate of Results of Election. The officer in charge shall retain the ballots and other material among official records for at least one year. At the end of one year, the officer in charge shall forward the contents of the boxes and other related material to the appropriate Federal Records Center.

§81.9 Voting districts.

If: (a) Voting districts have not already been designated for tribal elections in the tribal constitution or by tribal election ordinance or resolution; and (b) in the election board's judgment voting districts are needed, the board shall establish them and designate a polling place for each district. Where a reservation exists, no voting district may be established beyond its boundaries.

§81.10 District Election Boards.

(a) Where voting districts have been established by the tribal constitution, ordinance, resolution, or by the election board, the election board shall appoint district election boards for each district, which shall have the duties prescribed above for the election board except that they shall return to the election board:

(1) The ballots (in marked and locked boxes),

(2) All unused ballots, and

(3) Their certifications of the district election results on the certification forms prescribed by the election board.

(b) The board will compile the election results for the entire reservation and transmit them together with the aforementioned ballots and ballot boxes to the officer in charge.

§81.11 Registration.

(a) Only registered voters will be entitled to vote, and all determinations of the sufficiency of the number of ballots cast will be based upon the number of registered voters. The election board, upon receipt of authorization to conduct an election, shall notify by regular mail all adult members of the tribe, who to its knowledge are eligible to vote pursuant to §81.6 of the need to register if they intend to vote. Any tribal member who, to the election board's knowledge, will become 18 years of age within 150 days (180 days for Alaska tribes) from the date of authorization and who is otherwise eligible to vote shall also be notified and shall be eligible to register, provided that such a person shall not be entitled to vote if election day falls before the individual's 18th birthday. This notice shall be sent to an individual's last known address as it appears on the records of the local unit of the Bureau of Indian Affairs having jurisdiction. Each notice addressed to a tribal member not residing on the reservation shall be accompanied by a preaddressed registration form (BIA Form 8302) which shall set forth the following information in the upper right corner:

(1) OMB Clearance Number 1076–003, Expires June 30, 1983;

(2) The name and address of the person desiring to register;

(3) A statement with a signature line attesting that the individual is a tribal member and is at least 18 years of age, or will be within 150 days, (180 days for Alaska tribes) from the date of authorization; and

(4) The three following statements: ''Completion of and return of this registration form is necessary if you desire to become qualified to vote in the forthcoming constitutional or charter election.'' ''This form, upon completion and return to the election board, shall be the basis for determining whether you qualify to have your name placed upon the list of registered voters and receive a ballot'' and ''completion and return of this form is voluntary.'' Members who qualify as absentee voters and wish to cast an absentee ballot must complete and return the above registration form before, or in conjunction with, requesting an absentee ballot in sufficient time to permit compliance with § 81.12.

(b) The following records shall be kept for all notices:

(1) Names and addresses of persons to whom notices are mailed;

(2) Date of mailing; and

(3) A copy of each return registration request (including from whom received and date and time of receipt).

Tribal members living on the reservation who desire to vote must register with the election board in the manner it determines in time to permit compliance with § 81.12. Registration procedures for such Indians shall be included in the notice of the need to register to resident members.

[46 FR 1670, Jan. 7, 1981, as amended at 46 FR 38352, July 27, 1981. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 81.12 Voting list.

The election board shall compile in alphabetical order an official list of registered voters arranged by voting districts, if any. This list shall designate, where applicable, those who have requested an absentee ballot and the members of the tribe who are or will have attained the age of 18 years within 150 days (180 days for Alaska tribes) from the date an election is authorized and who have duly registered to vote. A copy of this list shall be supplied to any district election board and shall be posted at the headquarters of the local administrative unit of the Bureau of Indian Affairs, the tribal headquarters, and at various other public places designated by the election board at least 20 days prior to the election.

§ 81.13 Eligibility disputes.

The election board shall determine the eligibility of any written claim to vote presented to it by one whose name does not appear on the official list of registered voters as well as any written challenge of the right to vote of anyone whose name is on the list. Its decision shall be final. It shall rule on all claims no later than ten days before the election. Any claim not presented at least ten days before the election shall be disallowed. Nonresident claimants successfully appealing omission from the list shall immediately be furnished an absentee ballot. Omission of names from the voters list due to late registration, if notification (pursuant to § 81.14) has been timely mailed, shall not be considered grounds for challenge.

§ 81.14 Election notices.

Not less than 30 nor more than 60 days notice shall be given of the date of the election. Such notice shall include the location of where the results will be posted. The notice shall also advise that persons must register if they intend to vote. The election board shall determine whether the notice will be given by television, radio, newspaper, poster, or mail, or by more than one of these methods and whether in an Indian language in addition to English. A copy of any written election notice may be mailed to each registered voter and shall be posted at the local administrative unit of the Bureau of Indian Affairs and elsewhere as directed by the election board. At any time after receiving Secretarial authorization to hold the election, the board shall make available to the adult members of the tribe the text of any amendment or proposed constitution and bylaws, amendment thereto, charter, or charter amendment. The election board may determine the manner and timing of the distribution. However, the text shall be posted at least within the local administrative unit of the Bureau and the tribal headquarters within two days following the giving of notice of the election date by the election board.

§ 81.15 Opening and closing of polls.

If polling places are established, the polls shall remain open from 8 a.m. to

7 p.m., local time, unless different hours are set by the election board and the voters are informed of this in the election notice.

§81.16 Interpreters.

Interpreters, where needed, may be provided to explain the manner of voting to any voter who asks for instructions; provided, that all reasonable precautions are taken to ensure that the interpreter does not influence the voter in casting the ballot. The interpreter may accompany the voter into the booth upon the latter's request.

§81.17 Electioneering.

There shall be no electioneering during voting hours within 50 feet of any voting place. Sample ballots will be permitted in the voting booth.

§81.18 Manner of voting.

(a) Registered voters may vote by arriving at the appropriate polling place within the prescribed voting hours telling officials their names and addresses, signing their signature or mark on the voting list, and by marking and placing in the ballot box the ballots which will be handed to them. Voting shall be by secret ballot.

(b) Voting may take place at the same time regarding the adoption of a constitution, the ratification of a charter, or the amendment of such documents; provided, that entitlement to vote for the proposal is consistent with §81.6 of this part and, provided further, that no charter shall be considered ratified if the proposed constitution is not adopted and approved.

(c) The election board may choose not to use polling places and provide for the issuance and receipt of ballots entirely through the the United States Postal Service. In that event, the election board shall use the appropriate procedures set forth in this part relating to absentee balloting.

§81.19 Absentee voting.

(a) Nonresident members who have registered may vote by absentee ballot except as prohibited by §81.6. Also, whenever, due to temporary absence from the reservation, illness, or physical disability, a registered and otherwise eligible voter is not able to vote at the polls and notifies the election board, the voter shall be entitled to vote by absentee ballot. Upon his or her request, the election board shall give or mail absentee ballots to registered voters who may be entitled to receive them pursuant to §81.6. At the same time, such voters will also be provided a copy of the proposal to be voted upon when the full text does not appear on the ballot. Appropriate records shall be kept of those from whom requests are received and the date they were received. The election board shall allow an absentee voter no less than ten days from the mailing out of an absentee ballot to receive and return the ballot. This period shall not be afforded absentee voters desiring to exchange a mutilated or spoiled ballot less than ten days before the election date. While requests for absentee ballots received less than ten days before an election will be promptly honored, no absentee ballot will be counted if received later than either the close of the polls or after some other deadline established by the election board. The election board shall furnish election officials the names of individuals who have been given or had mailed to them an absentee ballot.

(b) Accompanying the absentee ballot shall be:

(1) An inner envelope bearing on the outside, the words ''Absentee Ballot,''

(2) Instructions for completion of the absentee ballot,

(3) A copy of the proposed amendment, and

(4) A preaddressed outer envelope, imprinted on the back with a certificate as follows:

I, (name of voter), hereby certify that I am a qualified voter of the (name) Tribe of Indians; that I will be 18 years of age or over at the election date and am entitled to vote in the election to be held on (date of election); and that I cannot appear at the polling place on the reservation on the date of the election because (indicate one of the following reasons): I am a non resident voter ☐; or I expect to be temporarily absent from the reservation ☐; or because of illness ☐; or physical disability ☐; or because no polling place has been established ☐. I further certify that I marked the enclosed ballot in secret.

Signed:_____(voter's signature).

(c) The absentee voter shall mark the ballot and the ballot shall then be folded so as to conceal the marking and be placed in the envelope marked ''Absentee Ballot'' and the envelope sealed. The voter shall then place the sealed envelope marked ''Absentee Ballot'' in the outer envelope, seal it and complete the certificate and mail it. The preaddressed outer envelope shall be directed to the election board at the reservation. Absentee ballots must be received by the election board not later than the close of the polls or as otherwise directed by the election board.

(d) The election board shall make and keep a record of ballots mailed, to whom mailed, the date of mailing, the address on the envelope, the date of the return of the ballot, and from whom received. After duly recording the receipt date of absentee ballots received on time, representatives of the election board shall open the outer envelopes, secure them and place the unmarked inner envelopes containing the ballots in a separate box reserved for that purpose. After all other ballots have been counted, the absentee ballots shall be counted immediately and included in the results of the election.

§ 81.20 Ballots.

(a) Ballots are to be prepared clearly and simply so that it is easy for the voters to indicate a choice between no more than two alternatives. For example, if a tribal council or the petitioners propose to reduce the one-half degree blood quantum required to qualify for membership but want the voters to decide whether it should be one-fourth or one-eight, it would not be appropriate to put those two alternatives on the ballot. Doing so, would deny the voters an opportunity to vote for keeping the one-half degree blood quantum. Neither would it be appropriate to include all three blood quantum alternatives. Rather, those proposing the change should decide which blood quantum is to be submitted to the voters. The ballot in the Secretarial election would then give the electors the choice of marking either ''yes'' or ''no.'' A vote against the proposed change would be in favor of keeping the one-half degree blood quantum in the example.

(b) In preparing ballots for proposed amendments, care should be taken to ensure that:

(1) Each proposed amendment addresses only a single question.

(2) If a proposed amendment conflicts with other provisions of the document being amended, the ballot shall be prepared so that the question includes all changes in those other directly related provisions in order to avoid contradictions within the document.

(3) When more than one amendment is being submitted to the voters at a given election, the proposals shall be identified with alphabetical designations rather than numerical. The first of the several proposals would be labeled ''Proposed Amendment A,'' the next would be ''Proposed Amendment B,'' etc. Those amendments that are adopted and approved would then be assigned consecutive numbers to follow those assigned any earlier amendments that may have been make to that governing document. A statement similar to the following shall appear on each of the proposed amendments and shall be completed following the election:

Having been duly adopted and approved, Proposed Amendment (A,B,C, etc.) is hereby designated as Amendment No. — to the (Constitution, Charter, etc.) of the (name of tribe) Tribe.

(c) The election board will supply all ballots. Each ballot shall be stamped in red ink on its face in the same place:

OFFICIAL BALLOT
(Facsimile Signature)
CHAIRMAN, ELECTION BOARD

(d) Should any voter spoil or mutilate a ballot in the course of voting at a poll, the voter shall destroy it in the presence of the election officials and the election officials shall then make note of the destroyed ballot and furnish the voter with another ballot.

(e) Any spoiled or mutilated absentee ballot may be exchanged for a new one by returning it to the election board with a request for another. The board shall honor the request promptly and note the dates of related actions. No extension of time will be granted for receipt of exchanged ballots that might not be cast on time.

§81.21 Counting of ballots.

All duly cast ballots are to be counted. Even though it will not be possible to determine the intent of the voter regarding spoiled and mutilated ballots, they are to be counted for purposes of determining whether the required percentage of voters have cast their ballots in the election. Invalid ballots shall not be counted for purposes of determining the required percentage of votes cast.

§81.22 Contesting of election results.

Any qualified voter, within three days following the posting of the results of an election, may challenge the election results by filing with the Secretary through the officer in charge the grounds for the challenge, *together with substantiating evidence.* If in the opinion of the Secretary, the objections are valid and warrant a recount or new election, the Secretary shall order a recount or a new election. The results of the recount or new election shall be final.

§81.23 Posting and certifying election results.

(a) The results of the election shall be posted in the local Bureau of Indian Affairs office, tribal headquarters, and at other appropriate public places determined by the election board.

(b) The election board shall certify the results of the election on the following form and transmit them to the local unit of the Bureau of Indian Affairs:

Certificate of Results of Election

Pursuant to a Secretarial election authorized by the (title of authorizing officer) on (date), the attached Constitution and Bylaws (Amendment, Charter or Charter Amendment) of the (name of tribe) was submitted to the qualified voters of the tribe and on (date), was duly (adopted) (ratified) (rejected) or (revoked) by a vote of (number) for and (number) against and (number) cast ballots found spoiled or mutilated in an election in which at least 30 percent (or such ''percentages'' as may be required to amend according to the constitution) of the (number) members entitled to vote, cast their ballot in accordance with (appropriate Federal statute). Signed: (By the chairman of the election board and board members.)

Date: _____

§81.24 Approval, disapproval, or rejection action.

(a) Action to approve or disapprove constitutional actions will be taken promptly by the authorizing officer following receipt of the original text of the material voted upon and the original of the Certificate of Results of Election from the officer in charge.

(1) When required and granted, the authorizing officer shall furnish a tribe with written approval of constitutional actions. In the absence of an election challenge, the approval shall be issued promptly following the expiration of the contest period. Copies of his/her written approval, the Certificate of Results of Election, and the text of the material voted upon shall be transmitted to the Commissioner of Indian Affairs, 18th and C Streets, NW., Washington, DC 20245.

(2) When a proposed constitution or charter action is rejected by the voters, the authorizing officer shall indicate in writing to the tribe his/her awareness of the election results and send to the Commissioner of Indian Affairs in Washington, DC, copies of the communication, the Certificate of Results of Election and the text of the material voted upon.

(3) When the authorizing officer disapproves a constitutional action, he/she shall in writing promptly notify the tribe of the determination and furnish the Commissioner of Indian Affairs in Washington, DC, a copy of the communication along with the Certificate of Results of Election and the text of the material voted upon.

(b) Where Secretarial approval of proposed constitutional and charter actions is required in conjunction with authorization of an election, copies of the formal approval shall immediately be furnished the Commissioner of Indian Affairs in Washington, DC, by the authorizing officer and be followed in accordance with paragraph (a)(1) of this section by copies of the Certificate of the Results of Election and the text of the material voted upon as soon as it is available.

PART 82—PETITIONING PROCEDURES FOR TRIBES REORGANIZED UNDER FEDERAL STATUTE AND OTHER ORGANIZED TRIBES

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AUTHORITY: 5 U.S.C. 301, and 25 U.S.C. 2, 9, 473a, 476, 477 and 503.

SOURCE: 46 FR 1675, Jan. 7, 1981, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 82.1 Definitions.

As used in this part:

(a) *Area Director* means the Director of the Bureau Area Office having administrative jurisdiction over the petitioners' tribe.

(b) *Bureau* means the Bureau of Indian Affairs.

(c) *Charter* means a charter of incorporation the Secretary may issue to a recognized tribe pursuant to a Federal Statute.

(d) *Commissioner* means the Commissioner of Indian Affairs or his/her authorized representative.

(e) *Constitution* or *Constitution and Bylaws* means the written organizational framework of any tribe for the exercise of governmental powers.

(f) *Eligible, entitled, or qualified voter* means the status achieved by a tribal member who meets the requirement of a tribal constitution or election ordinance to vote in a tribal election; provided, that where a tribe has reorganized pursuant to a Federal Statute, to be an entitled or a qualified voter for purposes of this part, the tribal member must be at least 18 years of age and be eligible to register for voting in a Secretarial election (see part 81 of this chapter).

(g) *Federal Statute* means one of the following: (1) The Act of June 18, 1934, 48 Stat. 984, as amended (Indian Reorganization Act), (2) the Act of June 26, 1936, 49 Stat. 1967 (Oklahoma Indian Welfare Act), or (3) the Act of May 1, 1936, 49 Stat. 1250 (Alaska Native Reorganization Act).

(h) *Local Bureau Official* means the Superintendent, Field Representative, or other line officer of the Bureau of Indian Affairs who has local administrative jurisdiction over the tribe concerned.

(i) *Local Bureau unit* means the Bureau office having local administrative jurisdiction over the tribe concerned.

(j) *Member* means any person who is duly enrolled in a tribe, who meets a tribe's written criteria for membership, or is recognized as belonging to a tribe by the local Indians comprising that tribe.

(k) *Organized tribe* means any tribe that has adopted a constitution outside of a Federal Statute.

(l) *Reorganized tribe* means any tribe that has adopted a constitution pursuant to a Federal Statute.

(m) *Secretarial election* means an election held within a tribe pursuant to regulations prescribed by the Secretary (as distinguished from *tribal* elections which are conducted under tribal authority (See *Cheyenne River Sioux Tribe* v. *Andrus*, 566 F.2d 1085 (8th Cir., 1977), *cert. denied* 439 U.S. 820 (1978)).

(n) *Secretary* means the Secretary of the Interior or his/her authorized representative.

(o) *Spokesman for the petitioners* means the authorized voter of a tribe initiating a petition or designated by the initiators of a petition to speak on their behalf.

(p) *Tribe* means any Indian entity that is listed or is eligible to be listed in the FEDERAL REGISTER pursuant to § 83.6(b) of this chapter as recognized and receiving services from the Bureau that has adopted a constitution approved by the Secretary or the Commissioner.

§ 82.2 Purpose and scope.

The purpose of this part is to provide uniformity and order in the formulation and submission of petitions requesting the Secretary or the Commissioner to call elections to amend tribal constitutions, to issue charters pursuant to a Federal Statute, and for such other purposes where constitutions and

charters provide for petitioning to effect action by the Secretary or Commissioner.

§82.3 Applicability to tribal groups.

The regulations in this part apply:

(a) To any tribe which provides in its constitution for petitioning the Secretary or the Commissioner to call elections to amend the tribal constitution;

(b) To any tribe whose constitution or charter provides for petitioning to effect any other action by the Secretary or Commissioner; and

(c) To those tribal members at least 18 years of age who, pursuant to a Federal Statute, may wish to petition the Secretary to issue a charter to their tribe.

§82.4 Entitlement to petition.

All members eligible to vote in elections conducted by a tribe shall be entitled to sign petitions to effect actions by the Secretary or Commissioner within the scope of §82.2; provided, that where a tribe is reorganized pursuant to a Federal Statute, only persons eligible to register for Secretarial elections may petition.

§82.5 Sufficiency of a petition.

(a) The numerical sufficiency of any petition submitted pursuant to this part shall be based upon a number determined by the local Bureau official:

(1) By consultation with the tribal governing body regarding the current number of tribal voters; or

(2) For reorganized tribes, the number of members considered eligible to register for a Secretarial election and who are at least 18 years of age.

(b) The number shall be made available to the spokesman for the petitioners upon request along with a cut-off date when, for purposes of the petition, no further names will be added.

§82.6 Petition format.

Petitions may consist of as many pages as are necessary to accommodate the signatures of the petitioners. However, each sheet of a petition must set forth at least a summary of the objectives of the petitioners and must show the date upon which the petition was signed by each individual as well as the current mailing address of each signer.

§82.7 Notarization of petition signatures.

(a) Signatures to a petition must be authenticated in one of the following ways:

(1) Through having each signer subscribe or acknowledge his/her signature before a notary public;

(2) Through having the collector of signatures appeal before a notary and sign, in his/her presence, on each sheet of the petition, a statement attesting that the signatures were affixed on the dates shown and by the individuals whose names appear thereon, and that to the best of his/her knowledge the signatories are eligible, entitled, or qualified voters.

(b) Only an eligible, entitled, or qualified tribal voter shall be recognized as a valid collector of petition signatures.

§82.8 Filing of petitions.

All petitions submitted pursuant to this part must be filed with the local Bureau official having administrative jurisdiction over the tribe. No petitions will be accepted until a spokesman for the petitioners declares that he/she wishes to make an official filing. Once a declaration of the official filing is made and the petition is given to the local Bureau official, that official shall immediately enter on the petition the date of receipt (this date becomes the date of official filing) and shall inform the spokesman for the petitioners that no additional signatures may be added and that no withdrawal of signatures will be permitted. The local Bureau official shall also acknowledge, in writing, receipt of the petition, indicating the exact number of signatures which are attached and the official filing date. Upon this written acknowledgment of the petition, the local Bureau official shall publicly post at the local Bureau unit serving the tribe a statement of the matter proposed in the petition. This statement shall remain posted for a period of 30 days from the official filing date.

§ 82.9 Challenges.

(a) Once an official filing has been made, the local Bureau official shall immediately have copies made of the petition and its signatures. The local Bureau official shall keep these copies at the Agency or field office for 15 days following the date of official filing, during which time they shall be available for examination by authorized voters of the tribe upon request. During this 15–day period, challenges of signatures may be filed with the local Bureau official.

(b) Challenges will be considered on the following grounds:

(1) Forgery of signatures; and

(2) Lack of proper qualifications of a signer.

No challenge will be considered which is not accompanied by supporting evidence in writing. In the event that an individual's name appears on a petition more than once, all but one of the names shall be stricken.

§ 82.10 Action on the petition.

(a) Within 30 days after the official filing date, the local Bureau official shall forward to the Area Director, or when the Area Director is the local Bureau official, directly to the Commissioner, the original of the petition and its accompanying signatures, together with recommendations concerning challenges and conclusions concerning:

(1) The validity of the signatures;

(2) The adequacy of the number of signatures; and

(3) The propriety of the petitioning procedure.

(b) The Area Director or the Commissioner, as the case may be, shall within 45 days after the official filing date decide upon each challenge and the sufficiency of the petition and announce whether the petition shall be acted upon. If a decision is reached that the petitioning action is for any reason insufficient, the spokesman for the petitioners and the governing body of the tribe will be so informed and given the reasons for the decision. If a petitioning action warrants action by the Secretary or Commissioner, the spokesman for the petitioners and the governing body of the tribe concerned will be so informed. The decision in such matters shall be final. The procedures for implementing any action initiated by the acceptance of a petition will be determined in accordance with pertinent directives and regulations.

§ 82.11 Duration of petition.

Any petition submitted under this part, shall be considered only for the purpose stated therein. Once a petition has been acted upon, it shall not be used again.

PART 83—PROCEDURES FOR ESTABLISHING THAT AN AMERICAN INDIAN GROUP EXISTS AS AN INDIAN TRIBE

Sec.

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AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 43 U.S.C. 1457; and 209 Departmental Manual 8.

SOURCE: 59 FR 9293, Feb. 25, 1994, unless otherwise noted.

§ 83.1 Definitions.

As used in this part:

Area Office means a Bureau of Indian Affairs Area Office.

Assistant Secretary means the Assistant Secretary—Indian Affairs, or that officer's authorized representative.

Autonomous means the exercise of political influence or authority independent of the control of any other Indian governing entity. Autonomous must be understood in the context of the history, geography, culture and social organization of the petitioning group.

Board means the Interior Board of Indian Appeals.

Bureau means the Bureau of Indian Affairs.

Community means any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers. *Community* must be understood in the context of the history, geography, culture and social organization of the group.

Continental United States means the contiguous 48 states and Alaska.

Continuously or *continuous* means extending from first sustained contact with non-Indians throughout the group's history to the present substantially without interruption.

Department means the Department of the Interior.

Documented petition means the detailed arguments made by a petitioner to substantiate its claim to continuous existence as an Indian tribe, together with the factual exposition and all documentary evidence necessary to demonstrate that these arguments address the mandatory criteria in § 83.7(a) through (g).

Historically, historical or *history* means dating from first sustained contact with non-Indians.

Indian group or *group* means any Indian or Alaska Native aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe.

Indian tribe, also referred to herein as *tribe,* means any Indian or Alaska Native tribe, band, pueblo, village, or community within the continental United States that the Secretary of the Interior presently acknowledges to exist as an Indian tribe.

Indigenous means native to the continental United States in that at least part of the petitioner's territory at the time of sustained contact extended into what is now the continental United States.

Informed party means any person or organization, other than an interested party, who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner.

Interested party means any person, organization or other entity who can establish a legal, factual or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. ''Interested party'' includes the governor and attorney general of the state in which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized Indian tribes and unrecognized Indian groups that might be affected by an acknowledgment determination.

Letter of intent means an undocumented letter or resolution by which an Indian group requests Federal acknowledgment as an Indian tribe and expresses its intent to submit a documented petition.

Member of an Indian group means an individual who is recognized by an Indian group as meeting its membership criteria and who consents to being listed as a member of that group.

Member of an Indian tribe means an individual who meets the membership requirements of the tribe as set forth in its governing document or, absent such a document, has been recognized as a member collectively by those persons comprising the tribal governing body, and has consistently maintained tribal relations with the tribe or is listed on the tribal rolls of that tribe as a member, if such rolls are kept.

Petitioner means any entity that has submitted a letter of intent to the Secretary requesting acknowledgment that it is an Indian tribe.

Political influence or authority means a tribal council, leadership, internal process or other mechanism which the group has used as a means of influencing or controlling the behavior of its members in significant respects, and/or making decisions for the group which substantially affect its members, and/or representing the group in dealing with outsiders in matters of consequence. This process is to be understood in the context of the history, culture and social organization of the group.

Previous Federal acknowledgment means action by the Federal government clearly premised on identification of a tribal political entity and indicating clearly the recognition of a relationship between that entity and the United States.

Secretary means the Secretary of the Interior or that officer's authorized representative.

Sustained contact means the period of earliest sustained non-Indian settlement and/or governmental presence in the local area in which the historical tribe or tribes from which the petitioner descends was located historically.

Tribal relations means participation by an individual in a political and social relationship with an Indian tribe.

Tribal roll, for purposes of these regulations, means a list exclusively of those individuals who have been determined by the tribe to meet the tribe's membership requirements as set forth in its governing document. In the absence of such a document, a tribal roll means a list of those recognized as members by the tribe's governing body. In either case, those individuals on a tribal roll must have affirmatively demonstrated consent to being listed as members.

§ 83.2 Purpose.

The purpose of this part is to establish a departmental procedure and policy for acknowledging that certain American Indian groups exist as tribes. Acknowledgment of tribal existence by the Department is a prerequisite to the protection, services, and benefits of the Federal government available to Indian tribes by virtue of their status as tribes. Acknowledgment shall also mean that the tribe is entitled to the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. Acknowledgment shall subject the Indian tribe to the same authority of Congress and the United States to which other federally acknowledged tribes are subjected.

§ 83.3 Scope.

(a) This part applies only to those American Indian groups indigenous to the continental United States which are not currently acknowledged as Indian tribes by the Department. It is intended to apply to groups that can establish a substantially continuous tribal existence and which have functioned as autonomous entities throughout history until the present.

(b) Indian tribes, organized bands, pueblos, Alaska Native villages, or communities which are already acknowledged as such and are receiving services from the Bureau of Indian Affairs may not be reviewed under the procedures established by these regulations.

(c) Associations, organizations, corporations or groups of any character that have been formed in recent times may not be acknowledged under these regulations. The fact that a group that meets the criteria in § 83.7 (a) through (g) has recently incorporated or otherwise formalized its existing autonomous political process will be viewed as a change in form and have no bearing on the Assistant Secretary's final decision.

(d) Splinter groups, political factions, communities or groups of any character that separate from the main body of a currently acknowledged tribe may not be acknowledged under these regulations. However, groups that can establish clearly that they have functioned throughout history until the present as an autonomous tribal entity may be acknowledged under this part, even though they have been regarded by some as part of or have been associated in some manner with an acknowledged North American Indian tribe.

(e) Further, groups which are, or the members of which are, subject to congressional legislation terminating or forbidding the Federal relationship may not be acknowledged under this part.

(f) Finally, groups that previously petitioned and were denied Federal acknowledgment under these regulations or under previous regulations in part 83 of this title, may not be acknowledged under these regulations. This includes reorganized or reconstituted petitioners previously denied, or splinter groups, spin-offs, or component groups of any type that were once part of petitioners previously denied.

(g) Indian groups whose documented petitions are under active consideration at the effective date of these revised regulations may choose to complete their petitioning process either

under these regulations or under the previous acknowledgment regulations in part 83 of this title. This choice must be made by April 26, 1994. This option shall apply to any petition for which a determination is not final and effective. Such petitioners may request a suspension of consideration under §83.10(g) of not more than 180 days in order to provide additional information or argument.

§83.4 Filing a letter of intent.

(a) Any Indian group in the continental United States that believes it should be acknowledged as an Indian tribe and that it can satisfy the criteria in §83.7 may submit a letter of intent.

(b) Letters of intent requesting acknowledgment that an Indian group exists as an Indian tribe shall be filed with the Assistant Secretary—Indian Affairs, Department of the Interior, 1849 C Street, NW., Washington, DC 20240. Attention: Branch of Acknowledgment and Research, Mail Stop 2611–MIB. A letter of intent may be filed in advance of, or at the same time as, a group's documented petition.

(c) A letter of intent must be produced, dated and signed by the governing body of an Indian group and submitted to the Assistant Secretary.

§83.5 Duties of the Department.

(a) The Department shall publish in the FEDERAL REGISTER, no less frequently than every three years, a list of all Indian tribes entitled to receive services from the Bureau by virtue of their status as Indian tribes. The list may be published more frequently, if the Assistant Secretary deems it necessary.

(b) The Assistant Secretary shall make available revised and expanded guidelines for the preparation of documented petitions by September 23, 1994. These guidelines will include an explanation of the criteria and other provisions of the regulations, a discussion of the types of evidence which may be used to demonstrate particular criteria or other provisions of the regulations, and general suggestions and guidelines on how and where to conduct research. The guidelines may be supplemented or updated as necessary. The Department's example of a documented petition format, while preferable, shall not preclude the use of any other format.

(c) The Department shall, upon request, provide petitioners with suggestions and advice regarding preparation of the documented petition. The Department shall not be responsible for the actual research on behalf of the petitioner.

(d) Any notice which by the terms of these regulations must be published in the FEDERAL REGISTER, shall also be mailed to the petitioner, the governor of the state where the group is located, and to other interested parties.

(e) After an Indian group has filed a letter of intent requesting Federal acknowledgment as an Indian tribe and until that group has actually submitted a documented petition, the Assistant Secretary may contact the group periodically and request clarification, in writing, of its intent to continue with the petitioning process.

(f) All petitioners under active consideration shall be notified, by April 16, 1994, of the opportunity under §83.3(g) to choose whether to complete their petitioning process under the provisions of these revised regulations or the previous regulations as published, on September 5, 1978, at 43 FR 39361.

(g) All other groups that have submitted documented petitions or letters of intent shall be notified of and provided with a copy of these regulations by July 25, 1994.

§83.6 General provisions for the documented petition.

(a) The documented petition may be in any readable form that contains detailed, specific evidence in support of a request to the Secretary to acknowledge tribal existence.

(b) The documented petition must include a certification, signed and dated by members of the group's governing body, stating that it is the group's official documented petition.

(c) A petitioner must satisfy all of the criteria in paragraphs (a) through (g) of §83.7 in order for tribal existence to be acknowledged. Therefore, the documented petition must include thorough explanations and supporting

documentation in response to all of the criteria. The definitions in § 83.1 are an integral part of the regulations, and the criteria should be read carefully together with these definitions.

(d) A petitioner may be denied acknowledgment if the evidence available demonstrates that it does not meet one or more criteria. A petitioner may also be denied if there is insufficient evidence that it meets one or more of the criteria. A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. Conclusive proof of the facts relating to a criterion shall not be required in order for the criterion to be considered met.

(e) Evaluation of petitions shall take into account historical situations and time periods for which evidence is demonstrably limited or not available. The limitations inherent in demonstrating the historical existence of community and political influence or authority shall also be taken into account. Existence of community and political influence or authority shall be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time. Fluctuations in tribal activity during various years shall not in themselves be a cause for denial of acknowledgment under these criteria.

(f) The criteria in § 83.7 (a) through (g) shall be interpreted as applying to tribes or groups that have historically combined and functioned as a single autonomous political entity.

(g) The specific forms of evidence stated in the criteria in § 83.7 (a) through (c) and § 83.7(e) are not mandatory requirements. The criteria may be met alternatively by any suitable evidence that demonstrates that the petitioner meets the requirements of the criterion statement and related definitions.

§ 83.7 Mandatory criteria for Federal acknowledgment.

The mandatory criteria are:

(a) The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification by other than the petitioner itself or its members.

(1) Identification as an Indian entity by Federal authorities.

(2) Relationships with State governments based on identification of the group as Indian.

(3) Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.

(4) Identification as an Indian entity by anthropologists, historians, and/or other scholars.

(5) Identification as an Indian entity in newspapers and books.

(6) Identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations.

(b) A predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

(1) This criterion may be demonstrated by some combination of the following evidence and/or other evidence that the petitioner meets the definition of *community* set forth in § 83.1:

(i) Significant rates of marriage within the group, and/or, as may be culturally required, patterned out-marriages with other Indian populations.

(ii) Significant social relationships connecting individual members.

(iii) Significant rates of informal social interaction which exist broadly among the members of a group.

(iv) A significant degree of shared or cooperative labor or other economic activity among the membership.

(v) Evidence of strong patterns of discrimination or other social distinctions by non-members.

(vi) Shared sacred or secular ritual activity encompassing most of the group.

(vii) Cultural patterns shared among a significant portion of the group that

are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization, or religious beliefs and practices.

(viii) The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name.

(ix) A demonstration of historical political influence under the criterion in § 83.7(c) shall be evidence for demonstrating historical community.

(2) A petitioner shall be considered to have provided sufficient evidence of community at a given point in time if evidence is provided to demonstrate any one of the following:

(i) More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the group, and the balance of the group maintains consistent interaction with some members of the community;

(ii) At least 50 percent of the marriages in the group are between members of the group;

(iii) At least 50 percent of the group members maintain distinct cultural patterns such as, but not limited to, language, kinship organization, or religious beliefs and practices;

(iv) There are distinct community social institutions encompassing most of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; or

(v) The group has met the criterion in § 83.7(c) using evidence described in § 83.7(c)(2).

(c) The petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

(1) This criterion may be demonstrated by some combination of the evidence listed below and/or by other evidence that the petitioner meets the definition of political influence or authority in § 83.1.

(i) The group is able to mobilize significant numbers of members and significant resources from its members for group purposes.

(ii) Most of the membership considers issues acted upon or actions taken by group leaders or governing bodies to be of importance.

(iii) There is widespread knowledge, communication and involvement in political processes by most of the group's members.

(iv) The group meets the criterion in § 83.7(b) at more than a minimal level.

(v) There are internal conflicts which show controversy over valued group goals, properties, policies, processes and/or decisions.

(2) A petitioning group shall be considered to have provided sufficient evidence to demonstrate the exercise of political influence or authority at a given point in time by demonstrating that group leaders and/or other mechanisms exist or existed which:

(i) Allocate group resources such as land, residence rights and the like on a consistent basis.

(ii) Settle disputes between members or subgroups by mediation or other means on a regular basis;

(iii) Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms and the enforcement of sanctions to direct or control behavior;

(iv) Organize or influence economic subsistence activities among the members, including shared or cooperative labor.

(3) A group that has met the requirements in paragraph 83.7(b)(2) at a given point in time shall be considered to have provided sufficient evidence to meet this criterion at that point in time.

(d) A copy of the group's present governing document including its membership criteria. In the absence of a written document, the petitioner must provide a statement describing in full its membership criteria and current governing procedures.

(e) The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity.

(1) Evidence acceptable to the Secretary which can be used for this purpose includes but is not limited to:

(i) Rolls prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, or other purposes;

(ii) State, Federal, or other official records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iii) Church, school, and other similar enrollment records identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(iv) Affidavits of recognition by tribal elders, leaders, or the tribal governing body identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(v) Other records or evidence identifying present members or ancestors of present members as being descendants of a historical tribe or tribes that combined and functioned as a single autonomous political entity.

(2) The petitioner must provide an official membership list, separately certified by the group's governing body, of all known current members of the group. This list must include each member's full name (including maiden name), date of birth, and current residential address. The petitioner must also provide a copy of each available former list of members based on the group's own defined criteria, as well as a statement describing the circumstances surrounding the preparation of the current list and, insofar as possible, the circumstances surrounding the preparation of former lists.

(f) The membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe. However, under certain conditions a petitioning group may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, an acknowledged Indian tribe. The conditions are that the group must establish that it has functioned throughout history until the present as a separate and autonomous Indian tribal entity, that its members do not maintain a bilateral political relationship with the acknowledged tribe, and that its members have provided written confirmation of their membership in the petitioning group.

(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

§ 83.8 Previous Federal acknowledgment.

(a) Unambiguous previous Federal acknowledgment is acceptable evidence of the tribal character of a petitioner to the date of the last such previous acknowledgment. If a petitioner provides substantial evidence of unambiguous Federal acknowledgment, the petitioner will then only be required to demonstrate that it meets the requirements of § 83.7 to the extent required by this section.

(b) A determination of the adequacy of the evidence of previous Federal action acknowledging tribal status shall be made during the technical assistance review of the documented petition conducted pursuant to § 83.10(b). If a petition is awaiting active consideration at the time of adoption of these regulations, this review will be conducted while the petition is under active consideration unless the petitioner requests in writing that this review be made in advance.

(c) Evidence to demonstrate previous Federal acknowledgment includes, but is not limited to:

(1) Evidence that the group has had treaty relations with the United States.

(2) Evidence that the group has been denominated a tribe by act of Congress or Executive Order.

(3) Evidence that the group has been treated by the Federal Government as having collective rights in tribal lands or funds.

(d) To be acknowledged, a petitioner that can demonstrate previous Federal acknowledgment must show that:

(1) The group meets the requirements of the criterion in §83.7(a), except that such identification shall be demonstrated since the point of last Federal acknowledgment. The group must further have been identified by such sources as the same tribal entity that was previously acknowledged or as a portion that has evolved from that entity.

(2) The group meets the requirements of the criterion in §83.7(b) to demonstrate that it comprises a distinct community at present. However, it need not provide evidence to demonstrate existence as a community historically.

(3) The group meets the requirements of the criterion in §83.7(c) to demonstrate that political influence or authority is exercised within the group at present. Sufficient evidence to meet the criterion in §83.7(c) from the point of last Federal acknowledgment to the present may be provided by demonstration of substantially continuous historical identification, by authoritative, knowledgeable external sources, of leaders and/or a governing body who exercise political influence or authority, together with demonstration of one form of evidence listed in §83.7(c).

(4) The group meets the requirements of the criteria in paragraphs 83.7 (d) through (g).

(5) If a petitioner which has demonstrated previous Federal acknowledgment cannot meet the requirements in paragraphs (d) (1) and (3), the petitioner may demonstrate alternatively that it meets the requirements of the criteria in §83.7 (a) through (c) from last Federal acknowledgment until the present.

§83.9 Notice of receipt of a petition.

(a) Within 30 days after receiving a letter of intent, or a documented petition if a letter of intent has not previously been received and noticed, the Assistant Secretary shall acknowledge such receipt in writing and shall have published within 60 days in the FEDERAL REGISTER a notice of such receipt. This notice must include the name, location, and mailing address of the petitioner and such other information as will identify the entity submitting the letter of intent or documented petition and the date it was received. This notice shall also serve to announce the opportunity for interested parties and informed parties to submit factual or legal arguments in support of or in opposition to the petitioner's request for acknowledgment and/or to request to be kept informed of all general actions affecting the petition. The notice shall also indicate where a copy of the letter of intent and the documented petition may be examined.

(b) The Assistant Secretary shall notify, in writing, the governor and attorney general of the state in which a petitioner is located. The Assistant Secretary shall also notify any recognized tribe and any other petitioner which appears to have a historical or present relationship with the petitioner or which may otherwise be considered to have a potential interest in the acknowledgment determination.

(c) The Assistant Secretary shall also publish the notice of receipt of the letter of intent, or documented petition if a letter of intent has not been previously received, in a major newspaper or newspapers of general circulation in the town or city nearest to the petitioner. The notice will include all of the information in paragraph (a) of this section.

§83.10 Processing of the documented petition.

(a) Upon receipt of a documented petition, the Assistant Secretary shall cause a review to be conducted to determine whether the petitioner is entitled to be acknowledged as an Indian tribe. The review shall include consideration of the documented petition and the factual statements contained therein. The Assistant Secretary may also initiate other research for any purpose relative to analyzing the documented petition and obtaining additional information about the petitioner's status. The Assistant Secretary may likewise consider any evidence which may be submitted by interested parties or informed parties.

(b) Prior to active consideration of the documented petition, the Assistant Secretary shall conduct a preliminary review of the petition for purposes of technical assistance.

(1) This technical assistance review does not constitute the Assistant Secretary's review to determine if the petitioner is entitled to be acknowledged as an Indian tribe. It is a preliminary review for the purpose of providing the petitioner an opportunity to supplement or revise the documented petition prior to active consideration. Insofar as possible, technical assistance reviews under this paragraph will be conducted in the order of receipt of documented petitions. However, technical assistance reviews will not have priority over active consideration of documented petitions.

(2) After the technical assistance review, the Assistant Secretary shall notify the petitioner by letter of any obvious deficiencies or significant omissions apparent in the documented petition and provide the petitioner with an opportunity to withdraw the documented petition for further work or to submit additional information and/or clarification.

(3) If a petitioner's documented petition claims previous Federal acknowledgment and/or includes evidence of previous Federal acknowledgment, the technical assistance review will also include a review to determine whether that evidence is sufficient to meet the requirements of previous Federal acknowledgment as defined in § 83.1.

(c) Petitioners have the option of responding in part or in full to the technical assistance review letter or of requesting, in writing, that the Assistant Secretary proceed with the active consideration of the documented petition using the materials already submitted.

(1) If the petitioner requests that the materials submitted in response to the technical assistance review letter be again reviewed for adequacy, the Assistant Secretary will provide the additional review. However, this additional review will not be automatic and will be conducted only at the request of the petitioner.

(2) If the assertion of previous Federal acknowledgment under § 83.8 cannot be substantiated during the technical assistance review, the petitioner must respond by providing additional evidence. A petitioner claiming previous Federal acknowledgment who fails to respond to a technical assistance review letter under this paragraph, or whose response fails to establish the claim, shall have its documented petition considered on the same basis as documented petitions submitted by groups not claiming previous Federal acknowledgment. Petitioners that fail to demonstrate previous Federal acknowledgment after a review of materials submitted in response to the technical assistance review shall be so notified. Such petitioners may submit additional materials concerning previous acknowledgment during the course of active consideration.

(d) The order of consideration of documented petitions shall be determined by the date of the Bureau's notification to the petitioner that it considers that the documented petition is ready to be placed on active consideration. The Assistant Secretary shall establish and maintain a numbered register of documented petitions which have been determined ready for active consideration. The Assistant Secretary shall also maintain a numbered register of letters of intent or incomplete petitions based on the original date of filing with the Bureau. In the event that two or more documented petitions are determined ready for active consideration on the same date, the register of letters of intent or incomplete petitions shall determine the order of consideration by the Assistant Secretary.

(e) Prior to active consideration, the Assistant Secretary shall investigate any petitioner whose documented petition and response to the technical assistance review letter indicates that there is little or no evidence that establishes that the group can meet the mandatory criteria in paragraph (e), (f) or (g) of § 83.7.

(1) If this review finds that the evidence clearly establishes that the group does not meet the mandatory criteria in paragraph (e), (f) or (g) of § 83.7, a full consideration of the documented petition under all seven of the mandatory criteria will not be undertaken pursuant to paragraph (a) of this

section. Rather, the Assistant Secretary shall instead decline to acknowledge that the petitioner is an Indian tribe and publish a proposed finding to that effect in the FEDERAL REGISTER. The periods for receipt of comments on the proposed finding from petitioners, interested parties and informed parties, for consideration of comments received, and for publication of a final determination regarding the petitioner's status shall follow the timetables established in paragraphs (h) through (l) of this section.

(2) If the review cannot clearly demonstrate that the group does not meet one or more of the mandatory criteria in paragraph (e), (f) or (g) of § 83.7, a full evaluation of the documented petition under all seven of the mandatory criteria shall be undertaken during active consideration of the documented petition pursuant to paragraph (g) of this section.

(f) The petitioner and interested parties shall be notified when the documented petition comes under active consideration.

(1) They shall also be provided with the name, office address, and telephone number of the staff member with primary administrative responsibility for the petition; the names of the researchers conducting the evaluation of the petition; and the name of their supervisor.

(2) The petitioner shall be notified of any substantive comment on its petition received prior to the beginning of active consideration or during the preparation of the proposed finding, and shall be provided an opportunity to respond to such comments.

(g) Once active consideration of the documented petition has begun, the Assistant Secretary shall continue the review and publish proposed findings and a final determination in the FEDERAL REGISTER pursuant to these regulations, notwithstanding any requests by the petitioner or interested parties to cease consideration. The Assistant Secretary has the discretion, however, to suspend active consideration of a documented petition, either conditionally or for a stated period of time, upon a showing to the petitioner that there are technical problems with the documented petition or administrative problems that temporarily preclude continuing active consideration. The Assistant Secretary shall also consider requests by petitioners for suspension of consideration and has the discretion to grant such requests for good cause. Upon resolution of the technical or administrative problems that are the basis for the suspension, the documented petition will have priority on the numbered register of documented petitions insofar as possible. The Assistant Secretary shall notify the petitioner and interested parties when active consideration of the documented petition is resumed. The timetables in succeeding paragraphs shall begin anew upon the resumption of active consideration.

(h) Within one year after notifying the petitioner that active consideration of the documented petition has begun, the Assistant Secretary shall publish proposed findings in the FEDERAL REGISTER. The Assistant Secretary has the discretion to extend that period up to an additional 180 days. The petitioner and interested parties shall be notified of the time extension. In addition to the proposed findings, the Assistant Secretary shall prepare a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision. Copies of the report shall be provided to the petitioner, interested parties, and informed parties and made available to others upon written request.

(i) Upon publication of the proposed findings, the petitioner or any individual or organization wishing to challenge or support the proposed findings shall have 180 days to submit arguments and evidence to the Assistant Secretary to rebut or support the proposed finding. The period for comment on a proposed finding may be extended for up to an additional 180 days at the Assistant Secretary's discretion upon a finding of good cause. The petitioner and interested parties shall be notified of the time extension. Interested and informed parties who submit arguments and evidence to the Assistant Secretary must provide copies of their submissions to the petitioner.

(j)(1) During the response period, the Assistant Secretary shall provide technical advice concerning the factual

basis for the proposed finding, the reasoning used in preparing it, and suggestions regarding the preparation of materials in response to the proposed finding. The Assistant Secretary shall make available to the petitioner in a timely fashion any records used for the proposed finding not already held by the petitioner, to the extent allowable by Federal law.

(2) In addition, the Assistant Secretary shall, if requested by the petitioner or any interested party, hold a formal meeting for the purpose of inquiring into the reasoning, analyses, and factual bases for the proposed finding. The proceedings of this meeting shall be on the record. The meeting record shall be available to any participating party and become part of the record considered by the Assistant Secretary in reaching a final determination.

(k) The petitioner shall have a minimum of 60 days to respond to any submissions by interested and informed parties during the response period. This may be extended at the Assistant Secretary's discretion if warranted by the extent and nature of the comments. The petitioner and interested parties shall be notified by letter of any extension. No further comments from interested or informed parties will be accepted after the end of the regular response period.

(l) At the end of the period for comment on a proposed finding, the Assistant Secretary shall consult with the petitioner and interested parties to determine an equitable timeframe for consideration of written arguments and evidence submitted during the response period. The petitioner and interested parties shall be notified of the date such consideration begins.

(1) Unsolicited comments submitted after the close of the response period established in § 83.10(i) and § 83.10(k), will not be considered in preparation of a final determination. The Assistant Secretary has the discretion during the preparation of the proposed finding, however, to request additional explanations and information from the petitioner or from commenting parties to support or supplement their comments on a proposed finding. The Assistant Secretary may also conduct such additional research as is necessary to evaluate and supplement the record. In either case, the additional materials will become part of the petition record.

(2) After consideration of the written arguments and evidence rebutting or supporting the proposed finding and the petitioner's response to the comments of interested parties and informed parties, the Assistant Secretary shall make a final determination regarding the petitioner's status. A summary of this determination shall be published in the FEDERAL REGISTER within 60 days from the date on which the consideration of the written arguments and evidence rebutting or supporting the proposed finding begins.

(3) The Assistant Secretary has the discretion to extend the period for the preparation of a final determination if warranted by the extent and nature of evidence and arguments received during the response period. The petitioner and interested parties shall be notified of the time extension.

(4) The determination will become effective 90 days from publication unless a request for reconsideration is filed pursuant to § 83.11.

(m) The Assistant Secretary shall acknowledge the existence of the petitioner as an Indian tribe when it is determined that the group satisfies all of the criteria in § 83.7. The Assistant Secretary shall decline to acknowledge that a petitioner is an Indian tribe if it fails to satisfy any one of the criteria in § 83.7.

(n) If the Assistant Secretary declines to acknowledge that a petitioner is an Indian tribe, the petitioner shall be informed of alternatives, if any, to acknowledgment under these procedures. These alternatives may include other means through which the petitioning group may achieve the status of an acknowledged Indian tribe or through which any of its members may become eligible for services and benefits from the Department as Indians, or become members of an acknowledged Indian tribe.

(o) The determination to decline to acknowledge that the petitioner is an Indian tribe shall be final for the Department.

(p) A petitioner that has petitioned under this part or under the acknowledgment regulations previously effective and that has been denied Federal acknowledgment may not re-petition under this part. The term ''petitioner'' here includes previously denied petitioners that have reorganized or been renamed or that are wholly or primarily portions of groups that have previously been denied under these or previous acknowledgment regulations.

§83.11 Independent review, reconsideration and final action

(a)(1) Upon publication of the Assistant Secretary's determination in the FEDERAL REGISTER, the petitioner or any interested party may file a request for reconsideration with the Interior Board of Indian Appeals. Petitioners which choose under §83.3(g) to be considered under previously effective acknowledgment regulations may nonetheless request reconsideration under this section.

(2) A petitioner's or interested party's request for reconsideration must be received by the Board no later than 90 days after the date of publication of the Assistant Secretary's determination in the FEDERAL REGISTER. If no request for reconsideration has been received, the Assistant Secretary's decision shall be final for the Department 90 days after publication of the final determination in the FEDERAL REGISTER.

(b) The petitioner's or interested party's request for reconsideration shall contain a detailed statement of the grounds for the request, and shall include any new evidence to be considered.

(1) The detailed statement of grounds for reconsideration filed by a petitioner or interested parties shall be considered the appellant's opening brief provided for in 43 CFR 4.311(a).

(2) The party or parties requesting the reconsideration shall mail copies of the request to the petitioner and all other interested parties.

(c)(1) The Board shall dismiss a request for reconsideration that is not filed by the deadline specified in paragraph (a) of this section.

(2) If a petitioner's or interested party's request for reconsideration is filed on time, the Board shall determine, within 120 days after publication of the Assistant Secretary's final determination in the FEDERAL REGISTER, whether the request alleges any of the grounds in paragraph (d) of this section and shall notify the petitioner and interested parties of this determination.

(d) The Board shall have the authority to review all requests for reconsideration that are timely and that allege any of the following:

(1) That there is new evidence that could affect the determination; or

(2) That a substantial portion of the evidence relied upon in the Assistant Secretary's determination was unreliable or was of little probative value; or

(3) That petitioner's or the Bureau's research appears inadequate or incomplete in some material respect; or

(4) That there are reasonable alternative interpretations, not previously considered, of the evidence used for the final determination, that would substantially affect the determination that the petitioner meets or does not meet one or more of the criteria in §83.7 (a) through (g).

(e) The Board shall have administrative authority to review determinations of the Assistant Secretary made pursuant to §83.10(m) to the extent authorized by this section.

(1) The regulations at 43 CFR 4.310—4.318 and 4.331—4.340 shall apply to proceedings before the Board except when they are inconsistent with these regulations.

(2) The Board may establish such procedures as it deems appropriate to provide a full and fair evaluation of a request for reconsideration under this section to the extent they are not inconsistent with these regulations.

(3) The Board, at its discretion, may request experts not associated with the Bureau, the petitioner, or interested parties to provide comments, recommendations, or technical advice concerning the determination, the administrative record, or materials filed by the petitioner or interested parties. The Board may also request, at its discretion, comments or technical assistance from the Assistant Secretary concerning the final determination or,

pursuant to paragraph (e)(8) of this section, the record used for the determination.

(4) Pursuant to 43 CFR 4.337(a), the Board may require, at its discretion, a hearing conducted by an administrative law judge of the Office of Hearings and Appeals if the Board determines that further inquiry is necessary to resolve a genuine issue of material fact or to otherwise augment the record before it concerning the grounds for reconsideration.

(5) The detailed statement of grounds for reconsideration filed by a petitioner or interested parties pursuant to paragraph (b)(1) of this section shall be considered the appellant's opening brief provided for in 43 CFR 4.311(a).

(6) An appellant's reply to an opposing party's answer brief, provided for in 43 CFR 4.311(b), shall not apply to proceedings under this section, except that a petitioner shall have the opportunity to reply to an answer brief filed by any party that opposes a petitioner's request for reconsideration.

(7) The opportunity for reconsideration of a Board decision provided for in 43 CFR 4.315 shall not apply to proceedings under this section.

(8) For purposes of review by the Board, the administrative record shall consist of all appropriate documents in the Branch of Acknowledgment and Research relevant to the determination involved in the request for reconsideration. The Assistant Secretary shall designate and transmit to the Board copies of critical documents central to the portions of the determination under a request for reconsideration. The Branch of Acknowledgment and Research shall retain custody of the remainder of the administrative record, to which the Board shall have unrestricted access.

(9) The Board shall affirm the Assistant Secretary's determination if the Board finds that the petitioner or interested party has failed to establish, by a preponderance of the evidence, at least one of the grounds under paragraphs (d)(1)—(d)(4) of this section.

(10) The Board shall vacate the Assistant Secretary's determination and remand it to the Assistant Secretary for further work and reconsideration if the Board finds that the petitioner or an interested party has established, by a preponderance of the evidence, one or more of the grounds under paragraphs (d)(1)—(d)(4) of this section.

(f)(1) The Board, in addition to making its determination to affirm or remand, shall describe in its decision any grounds for reconsideration other than those in paragraphs (d)(1)—(d)(4) of this section alleged by a petitioner's or interested party's request for reconsideration.

(2) If the Board affirms the Assistant Secretary's decision under § 83.11(e)(9) but finds that the petitioner or interested parties have alleged other grounds for reconsideration, the Board shall send the requests for reconsideration to the Secretary. The Secretary shall have the discretion to request that the Assistant Secretary reconsider the final determination on those grounds.

(3) The Secretary, in reviewing the Assistant Secretary's decision, may review any information available, whether formally part of the record or not. Where the Secretary's review relies upon information that is not formally part of the record, the Secretary shall insert the information relied upon into the record, together with an identification of its source and nature.

(4) Where the Board has sent the Secretary a request for reconsideration under paragraph (f)(2), the petitioner and interested parties shall have 30 days from receiving notice of the Board's decision to submit comments to the Secretary. Where materials are submitted to the Secretary opposing a petitioner's request for reconsideration, the interested party shall provide copies to the petitioner and the petitioner shall have 15 days from their receipt of the information to file a response with the Secretary.

(5) The Secretary shall make a determination whether to request a reconsideration of the Assistant Secretary's determination within 60 days of receipt of all comments and shall notify all parties of the decision.

(g)(1) The Assistant Secretary shall issue a reconsidered determination within 120 days of receipt of the Board's decision to remand a determination or the Secretary's request for reconsideration.

(2) The Assistant Secretary's reconsideration shall address all grounds determined to be valid grounds for reconsideration in a remand by the Board, other grounds described by the Board pursuant to paragraph (f)(1), and all grounds specified in any Secretarial request. The Assistant Secretary's reconsideration may address any issues and evidence consistent with the Board's decision or the Secretary's request.

(h)(1) If the Board finds that no petitioner's or interested party's request for reconsideration is timely, the Assistant Secretary's determination shall become effective and final for the Department 120 days from the publication of the final determination in the FEDERAL REGISTER.

(2) If the Secretary declines to request reconsideration under paragraph (f)(2) of this section, the Assistant Secretary's decision shall become effective and final for the Department as of the date of notification to all parties of the Secretary's decision.

(3) If a determination is reconsidered by the Assistant Secretary because of action by the Board remanding a decision or because the Secretary has requested reconsideration, the reconsidered determination shall be final and effective upon publication of the notice of this reconsidered determination in the FEDERAL REGISTER.

§83.12 Implementation of decisions.

(a) Upon final determination that the petitioner exists as an Indian tribe, it shall be considered eligible for the services and benefits from the Federal government that are available to other federally recognized tribes. The newly acknowledged tribe shall be considered a historic tribe and shall be entitled to the privileges and immunities available to other federally recognized historic tribes by virtue of their government-to-government relationship with the United States. It shall also have the responsibilities and obligations of such tribes. Newly acknowledged Indian tribes shall likewise be subject to the same authority of Congress and the United States as are other federally acknowledged tribes.

(b) Upon acknowledgment as an Indian tribe, the list of members submitted as part of the petitioners documented petition shall be the tribe's complete base roll for purposes of Federal funding and other administrative purposes. For Bureau purposes, any additions made to the roll, other than individuals who are descendants of those on the roll and who meet the tribe's membership criteria, shall be limited to those meeting the requirements of §83.7(e) and maintaining significant social and political ties with the tribe (i.e., maintaining the same relationship with the tribe as those on the list submitted with the group's documented petition).

(c) While the newly acknowledged tribe shall be considered eligible for benefits and services available to federally recognized tribes because of their status as Indian tribes, acknowledgment of tribal existence shall not create immediate access to existing programs. The tribe may participate in existing programs after it meets the specific program requirements, if any, and upon appropriation of funds by Congress. Requests for appropriations shall follow a determination of the needs of the newly acknowledged tribe.

(d) Within six months after acknowledgment, the appropriate Area Office shall consult with the newly acknowledged tribe and develop, in cooperation with the tribe, a determination of needs and a recommended budget. These shall be forwarded to the Assistant Secretary. The recommended budget will then be considered along with other recommendations by the Assistant Secretary in the usual budget request process.

§83.13 Information collection.

(a) The collections of information contained in §83.7 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0104. The information will be used to establish historical existence as a tribe, verify family relationships and the group's claim that its members are Indian and descend from a historical tribe or tribes which combined, that members are not substantially enrolled in other Indian tribes, and that they have not individually or as a group been terminated or otherwise forbidden the Federal relationship. Response is required

to obtain a benefit in accordance with 25 U.S.C. 2.

(b) Public reporting burden for this information is estimated to average 1,968 hours per petition, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this collection of information, including suggestions for reducing the burden, to both the Information Collection Clearance Officer, Bureau of Indian Affairs, Mail Stop 336–SIB, 1849 C Street, NW., Washington, DC 20240; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART 87—USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS

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AUTHORITY: 5 U.S.C. 301; 87 Stat. 466, 467, 468.

SOURCE: 39 FR 1835, Jan. 15, 1974, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 87.1 Definitions.

As used in this part 87, terms shall have the meanings set forth in this section.

(a) *Act* means the Act of October 19, 1973 (Pub. L. 93–134; 87 Stat. 466, 467, 468).

(b) *Secretary* means the Secretary of the Interior or his authorized representative.

(c) *Commissioner* means the Commissioner of Indian Affairs or his authorized representative.

(d) *Area Director* means the Area Director or his equivalent of any one of the Area Offices of the Bureau of Indian Affairs or his authorized representative.

(e) *Superintendent* means the Superintendent or Officer in Charge of any one of the Agency Offices or other local offices of the Bureau of Indian Affairs or his authorized representative.

(f) *Congressional Committees* means the Committees on Interior and Insular Affairs of the Senate and House of Representatives of the United States.

(g) *Indian tribe or group* means any Indian tribe, nation, band, pueblo, community or identifiable group of Indians, or Alaska Native entity.

(h) *Tribal governing body* means, as recognized by the Secretary, the governing body of a formally organized or recognized tribe or group; the governing body of any informally organized tribe or group, the governing body of a formally organized Alaska Native entity or recognized tribe in Oklahoma, and for the purposes of the Act the recognized spokesmen or representatives of any descendant group.

(i) *Plan* means the document submitted by the Secretary, together with all pertinent records, for the use or distribution of judgment funds, to the Congressional Committees.

(j) *Enrollment* means that aspect of a plan which pertains to making or bringing current a roll of members of an organized, reservation-based tribe with membership criteria approved or accepted by the Secretary, a roll of members of an organized or recognized entity in Oklahoma, or Alaska or elsewhere, or a roll prepared for the purpose of making per capita payments for judgments awarded by the Indian Claims Commission or United States Court of Claims; or which pertains to using an historical roll or records of names, including tribal rolls closed and made final, for research or other purposes.

(k) *Program* means that aspect of a plan which pertains to using part or all of the judgment funds for tribal social and economic development projects.

(l) *Per capita payment* means that aspect of a plan which pertains to the individualization of the judgment funds in the form of shares to tribal members or to individual descendants.

(m) *Use or distribution* means any utilization or disposition of the judgment funds, including programing, per capita payments, or a combination thereof.

(n) *Individual beneficiary* means a tribal member or any individual descendant, found by the Secretary to be eligible to participate in a plan, who was born on or prior to, and is living on, the approval date of the plan.

(o) *Approval date* means the date that a plan is approved by the Congress. Except for a plan disapproved by either House, the approval date of a plan shall be the sixtieth (60) day after formal submittal of a plan by the Secretary to the Congressional Committees, excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three (3) calendar days to a day certain. In the event a proposed plan is disapproved by either House, or in the event the Secretary is unable to submit a plan and therefore proposes legislation, the approval date shall be the date of the enabling legislation for the disposition of the judgment funds.

(p) *Minor* is an individual beneficiary who is eligible to participate in a per capita payment and who has not reached the age of eighteen (18) years.

(q) *Legal incompetent* is an individual beneficiary eligible to participate in a per capita payment and who has been declared to be under a legal disability, other than being a minor, by a court of competent jurisdiction, including tribal courts.

(r) *Attorney fees and litigation expenses* means all fees and expenses incurred in litigating and processing tribal claims before the Indian Claims Commission or the United States Court of Claims.

§87.2 Purpose.

The regulations in this part govern the preparation of proposed plans for the use or distribution, pursuant to the Act, of all judgment funds awarded from the date of the Act to Indian tribes and groups by the Indian Claims Commission or the United States Court of Claims, excepting any tribe or group whose trust relationship with the Federal Government has been terminated and for which there exists legislation authorizing the disposition of its judgment funds; and of all funds deriving from judgments entered prior to the date of the Act for which there has been no enabling legislation.

§87.3 Time limits.

(a) The Secretary shall cause to begin as early as possible the necessary research to determine the identity of the ultimate or present day beneficiaries of judgments. Such research shall be done under the direction of the Commissioner of Indian Affairs. The affected tribes or groups shall be encouraged to submit pertinent data. All pertinent data, including cultural, political and historical material, and records, including membership, census and other rolls shall be considered. If more than one entity is determined to be eligible to participate in the use or distribution of the funds, the results of the research shall include a proposed formula for the division or apportionment of the judgment funds among or between the involved entities.

(b) The results of all research shall be provided to the governing bodies of all affected tribes and groups. The Area Director shall assist the affected tribe or group in arranging for preliminary sessions or meetings of the tribal governing body, or public meetings. The Area Director shall make a presentation of the results of the research and shall arrange for expertise of the Bureau of Indian Affairs to be available at these meetings to assist the tribe or group in developing a use or distribution proposal, bearing in mind that under the Act not less than twenty (20) per centum of the judgment funds, including investment income thereon, is to be used for tribal programs unless the Secretary determines that the particular circumstances of the affected Indian tribe clearly warrant otherwise.

§87.4 Conduct of hearings of record.

(a) As soon as appropriate after the tribal meetings have been held and the Commissioner has reviewed the tribal proposal(s), the Area Director, or such other official of the Department of the Interior as he shall designate to act for

him, shall hold a hearing of record to receive testimony on the tribal proposal(s).

(b) The hearing shall be held after appropriate public notice beginning at least twenty (20) days prior to the date of such hearing, and after consultation with the governing body of the tribe or group regarding the date and location of the hearing, to obtain the testimony of members of the governing body and other representatives, spokesmen or members of the tribe or group on the proposal(s).

(c) All testimony at the hearing shall be transcribed and a transcript thereof shall be furnished to the Commissioner and the tribal governing body immediately subsequent to the hearing. Particular care shall be taken to insure that minority views are given full opportunity for expression either during the hearing or in the form of written communications by the date of the hearing.

(d) Whenever two or more tribes or groups are involved in the use or distribution of the judgment funds, including situations in which two or more Area Offices are concerned, every effort shall be made by the Area Director or Directors to arrange for a single hearing to be conducted at a time and location as convenient to the involved tribes and groups as possible. Should the tribes and groups not reach agreement on such time or place, or on the number of entities to be represented at the hearing, the Commissioner, after considering the views of the affected tribes and groups, shall within twenty (20) days of receipt of such advice by the Area Director, designate a location and date for such hearing and invite the participation of all entities he considers to be involved and the Commissioner's decision shall be final.

§ 87.5 Submittal of proposed plan by Secretary.

Subsequent to the hearing of record, the Commissioner shall prepare all pertinent materials for the review of the Secretary. Pertinent materials shall include:

(a) The tribal use or distribution proposal or any alternate proposals;

(b) A copy of the transcript of the hearing of record;

(c) A statement on the hearing of record and other evidence reflecting the extent to which such proposal(s) meets the desires of the affected tribe or group, including minorities views;

(d) Copies of all pertinent resolutions and other communications or documents received from the affected tribe or group, including minorities;

(e) A copy of the tribal constitution and bylaws, or other organizational document, if any; a copy of the tribal enrollment ordinance, if any; and a statement as to the availability or status of the membership roll of the affected tribe or group;

(f) A statement reflecting the nature and results of the investment of the judgment funds as of thirty (30) days of the submittal of the proposed plan, including a statement concerning attorney fees and litigation expenses;

(g) A statement justifying any compromise proposal developed by the Commissioner in the event of the absence of agreement among any and all entities on the division or apportionment of the funds, should two or more entities be involved;

(h) And a statement regarding the feasibility of the proposed plan, including a timetable prepared in cooperation with the tribal governing body, for the implementation of programing and roll preparation.

Within one hundred and eighty (180) days of the appropriation of the judgment funds the Secretary shall submit a proposed plan, together with the pertinent materials described above, simultaneously to each of the Chairmen of the Congressional Committees, at the same time sending copies of the proposed plan and materials to the governing body of the affected tribe or group. The one hundred and eighty (180) day period shall begin on the date of the Act with respect to all judgments for which funds have been appropriated and for which enabling legislation has not been enacted.

§ 87.6 Extension of period for submitting plans.

An extension of the one hundred and eighty (180) day period, not to exceed ninety (90) days, may be requested by the Secretary or by the governing body

of any affected tribe or group submitting such request to both Congressional Committees through the Secretary, and any such request shall be subject to the approval of both Congressional Committees.

§87.7 Submittal of proposed legislation by Secretary.

(a) Within thirty (30) calendar days after the date of a resolution by either House disapproving a plan, the Secretary shall simultaneously submit proposed legislation authorizing the use or distribution of the funds, together with a report thereon, to the Chairmen of both Congressional Committees, at the same time sending copies of the proposed legislation to the governing body of the affected tribe or group. Such proposed legislation shall be developed on the basis of further consultation with the affected tribe or group.

(b) In any instance in which the Secretary determines that circumstances are not conducive to the preparation and submission of a plan, he shall, after appropriate consultation with the affected tribe or group, submit proposed legislation within the 180-day period to both Congressional Committee simultaneously.

§87.8 Enrollment aspects of plans.

An approved plan that includes provisions for enrollment requiring formal adoption of enrollment rules and regulations shall be implemented through the publication of such rules and regulations in the FEDERAL REGISTER. Persons not members of organized or recognized tribes and who are not citizens of the United States shall not, unless otherwise provided by Congress, be eligible to participate in the use or distribution of judgment funds, excepting heirs or legatees of deceased individual beneficiaries.

§87.9 Programing aspects of plans.

In assessing any tribal programing proposal the Secretary shall consider all pertinent factors, including the following: the percentage of tribal members residing on or near the subject reservation, including former reservation areas in Oklahoma, or Alaska Native villages; the formal educational level and the general level of social and economic adjustment of such reservation residents; the nature of recent programing affecting the subject tribe or group and particularly the reservation residents; the needs and aspirations of any local Indian communities or districts within the reservation and the nature of organization of such local entities; the feasibility of the participation of tribal members not in residence on the reservation; the availability of funds for programing purposes derived from sources other than the subject judgment; and all other pertinent social and economic data developed to support any proposed program.

§87.10 Per capita payment aspects of plans and protection of funds accruing to minors, legal incompetents and deceased beneficiaries.

(a) The per capita shares of living competent adults shall be paid directly to them. The shares of minors, legal incompetents and deceased individual beneficiaries, enhanced by investment earnings, shall be held in individual Indian money (IIM) accounts unless otherwise provided as set out in this section. While held in IIM accounts, said shares shall be invested pursuant to 25 U.S.C. 162a and shall be the property of the minors or legal incompetents or the estates of the deceased individual beneficiaries to whom the per capita payments were made.

(b)(1) Unless otherwise provided in paragraph (b)(2) of this section, minors' per capita shares, until the minors attain the age of 18 years, shall be retained in individually segregated IIM accounts and handled as provided in §115.4 of this chapter. Should it be determined that the funds are to be invested pursuant to a trust, minors who will have reached the age of 18 years within six months after the establishment of the trust shall have their funds retained at interest in IIM accounts and paid to them upon attaining their majority.

(2) A private trust for the minors' per capita shares may be established subject to the approval of the tribal governing body and the Secretary on the following conditions:

(i) The tribal governing body specifically requests the establishment of

such trust, and the trust provides for segregated amounts to each individual minor, based on his per capita share, and

(ii) The trust agreement specifically provides that the investment policy to be followed is that of preserving the trust corpus and of obtaining the highest interest rates current money markets can safely provide. The trust agreement must further provide that maturity dates of investments cannot exceed the period of the trust and that only the following types of investment shall be made: United States Treasury obligations; Federal agency obligations; repurchase/resell agreements; United States Treasury bills; Bankers' acceptance, provided the assets of the issuing bank exceed $1 billion or the issuing bank pledges full collateral; Certificates of deposit, provided the assets of the issuing bank exceed $1 billion or the issuing bank pledges full collateral; Commercial paper, provided it is rated prime-2 by Moody or A–2 by Standard and Poor or is obligation of a company with outstanding unsecured debt rated Aa by Standard and Poor.

(c) The per capita shares of legal incompetents shall be held in IIM accounts and administered pursuant to the provisions of § 115.5 of this chapter.

(d) The shares of deceased individual beneficiaries, plus all interest and investment income accruing thereto, shall be paid to their heirs and legatees upon their determination as provided in 43 CFR part 4, subpart D.

(e) All per capita shares, including all interest and investment income accruing thereto, while they are held in trust under the provisions of this section, shall be exempt from Federal and State income taxes and shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act, as amended.

(f) All per capita shares or portions thereof, including all interest and investment income accruing thereto, which are not paid out but which remain unclaimed with the Federal Government shall be maintained separately and be enhanced by investment, and shall, unless otherwise provided in an effective plan or in enabling legislation, be subject to the provisions of the Act of September 22, 1961, 75 Stat. 584. No per capita share or portion thereof shall be transferred to the U.S. Treasury as ''Monies Belonging to Individuals Whose Whereabouts are Unknown.''

[41 FR 48735, Nov. 5, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 87.11 Investment of judgment funds.

As soon as possible after the appropriation of judgment funds and pending approval of a plan or the enactment of legislation authorizing the use or distribution of the funds, the Commissioner shall invest such funds pursuant to 25 U.S.C. 162a. Investments of judgment funds and of investment income therefrom will continue to be made by the Commissioner after the approval of a plan or enactment of use or distribution legislation to the extent funds remain available for investment under such plan or legislation, and provided that thereafter investments of judgment funds made available for tribal use are not undertaken by the tribe pursuant to authorizing law. Invested judgment funds, including investment income therefrom, shall be withdrawn from investment only as currently needed under approved plans or legislation authorizing the use or distribution of such funds.

§ 87.12 Insuring the proper performance of approved plans.

A timetable prepared in cooperation with the tribal governing body shall be included in the plan submitted by the Secretary for the implementation of all programing and enrollment aspects of a plan. At any time within one calendar year after the approval date of a plan, the Area Director shall report to the Commissioner on the status of the implementation of the plan, including all enrollment and programing aspects, and thenceforth shall report to the Commissioner on an annual basis regarding any remaining or unfulfilled aspects of a plan. The Area Director shall include in his first and all subsequent annual reports a statement regarding the maintenance of the timetable, a full accounting of any per capita distribution, and the expenditure of

all programing funds. The Commissioner shall report the deficient performance of any aspect of a plan to the Secretary, together with the corrective measures he has taken or intends to take.

PART 88—RECOGNITION OF ATTORNEYS AND AGENTS TO REPRESENT CLAIMANTS

Sec.
88.1 Employment of attorneys.
88.2 Employment by tribes or individual claimants.

AUTHORITY: 5 U.S.C. 301.

CROSS REFERENCES: For law and order regulations on Indian reservations, see part 11 of this chapter. For probate procedure, see part 15 of this chapter. For regulations governing the admission of attorneys to practice before the Department of the Interior and the offices and bureaus thereof, see 43 CFR part 1. For regulations governing the execution of attorney contracts with Indians, see part 89 of this subchapter.

§ 88.1 Employment of attorneys.

(a) Indian tribes organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461–479), as amended, may employ legal counsel. The choice of counsel and the fixing of fees are subject under 25 U.S.C. 476 to the approval of the Secretary of the Interior or his authorized representative.

(b) Attorneys may be employed by Indian tribes not organized under the Act of June 18, 1934, under contracts subject to approval under 25 U.S.C. 81 and the Reorganization Plan No. 3 of 1950, 5 U.S.C. 481, note, by the Secretary of the Interior or his authorized representative.

(c) Any action of the authorized representative of the Secretary of the Interior which approves, disapproves or conditionally approves a contract pursuant to paragraph (a) or (b) of this section shall be final.

(d) Practice of such attorneys before the Bureau of Indian Affairs and the Department of the Interior is subject to the requirements of 43 CFR 1.1 through 1.7.

[27 FR 11548, Nov. 24, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 88.2 Employment by tribes or individual claimants.

All such attorneys or agents seeking approval of their employment by Indian tribes or desiring to represent individual claimants before the Indian Bureau shall be required to comply fully with the regulations of the Department promulgated September 27, 1917, governing admission to practice, and to take the oath of allegiance and to support the Constitution of the United States, as required by section 3478 of the United States Revised Statutes (31 U.S.C. 204).

[22 FR 10538, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

PART 89—ATTORNEY CONTRACTS WITH INDIAN TRIBES

TRIBES ORGANIZED UNDER THE INDIAN REORGANIZATION ACT

Sec.
89.1 Contracts with organized tribes.
89.2 Admission to practice.
89.3 Tentative form of contract.
89.4 Report of Superintendent.
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TRIBES NOT ORGANIZED UNDER THE INDIAN REORGANIZATION ACT

89.7 Statutes governing.
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89.15 Vote by secret ballot.
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89.18 Tentative form of contract.
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FIVE CIVILIZED TRIBES

89.30 Contents and approval of contracts.
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PAYMENT OF TRIBAL ATTORNEY FEES WITH APPROPRIATED FUNDS

89.40 General policy.
89.41 Exceptions to policy.
89.42 Factors to be considered.
89.43 Procedures.

AUTHORITY: 5 U.S.C. 301; secs. 89.1 to 89.6 also issued under 25 U.S.C. 476; secs. 89.7 to 89.29 also issued under 25 U.S.C. 81; secs. 89.30 to 89.35 also issued under 25 U.S.C. 2, 9 and 82(a); secs. 89.40 to 89.43 also issued under 25 U.S.C. 13, 450 et. seq.

CROSS REFERENCE: For recognition of attorneys and agents to represent claimants, see part 88 of this subchapter.

TRIBES ORGANIZED UNDER THE INDIAN REORGANIZATION ACT

§ 89.1 Contracts with organized tribes.

(a) Negotiation and execution of tribal attorney contracts with Indian tribes organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461–479), as amended, shall be in accordance with the provisions of the approved constitution or charter of the respective tribes.

(b) The Secretary of the Interior or his authorized representative is authorized to approve pursuant to 25 U.S.C. 476 the selection of counsel and the amount of fees and expenses to be paid under any such contract.

[27 FR 11548, Nov. 24, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.2 Admission to practice.

Attorneys employed by tribes organized under the Indian Reorganization Act, shall be required to be admitted to practice before the Interior Department and the bureaus thereof, under the provisions of the act of July 4, 1884 (23 Stat. 101; 5 U.S.C. 493).

[22 FR 10538, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

CROSS REFERENCE: For rules and regulations governing admission to practice before the Interior Department and the bureaus thereof, see 43 CFR part 1.

§ 89.3 Tentative form of contract.

A tribal council or representative body having authority to employ legal counsel in behalf of an organized tribe, may, if it desires, obtain a tentative form of contract by written request directed to the office of any area director or agency superintendent, or to the Commissioner of Indian Affairs. Requests for forms should include a statement of the scope of the intended employment; that is, whether an attorney is desired for investigation and prosecution of tribal claims against the United States, or as a general legal counsel in connection with the ordinary business of the tribe, or specific problems on which legal advice is desired, or specific matters requiring representation in court or before committees of Congress and the departments of the Government. The period for which an attorney is desired should be stated.

[27 FR 11549, Nov. 24, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.4 Report of Superintendent.

Contracts executed by organized tribes should be transmitted to the Area Director by the Superintendent, with a report based upon references and independent inquiry concerning the qualifications of the attorney and his ability to perform the services required by the contract, and including the superintendent's recommendation with reference to approval of the contract.

[27 FR 11549, Nov. 24, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.5 Fees and expenses.

Funds held in the treasury of an organized tribe may be used by the tribe for payment of fees and expenses of an attorney. A contract providing for payment of fees and/or expenses should be accompanied by an appropriation act passed by the governing body of the tribe in accordance with the requirements of the tribal constitution or charter, appropriating sufficient tribal funds for payment of fees and/or expenses as provided by the contract. The amount of tribal funds held in the tribal treasury, not otherwise appropriated and available for payment of fees and expenses, should be stated.

[22 FR 10538, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

§89.6 Funds in Federal Treasury.

Under rulings of the Comptroller General and section 27 of the act of May 18, 1916 (39 Stat. 158; 25 U.S.C. 123), tribal funds held in the United States Treasury may not be used for payment of attorney fees and expenses in the absence of express authorization by Congress.

[22 FR 10538, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

TRIBES NOT ORGANIZED UNDER THE INDIAN REORGANIZATION ACT

§89.7 Statutes governing.

The negotiation and execution of tribal attorney contracts with tribes not organized under the Indian Reorganization Act must be in strict accordance with the requirements of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81).

[22 FR 10538, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

§89.8 Selection of counsel.

Except as stated in §§89.12 through 89.15 and 89.26, a tribal attorney or technical specialist and tribal delegates to execute a contract shall be selected by a general council or meeting of the tribe, to be called by the superintendent of the particular reservation.

[37 FR 10440, May 23, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

§89.9 Record of council proceedings.

A report should be made of the proceedings of the council, certified to by the Superintendent or his representative as correct, and a copy thereof should be sent to the Area Director with the contract.

[27 FR 11549, Nov. 24, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§89.10 Resolution required.

The selection of counsel and of tribal delegates to execute a contract in behalf of the tribe shall be set forth in a resolution or resolutions which shall be attached to and made a part of the contract.

[22 FR 10539, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

§89.11 Authentication of resolution.

The resolution shall be signed by the presiding officer of the general council, attested by the secretary of the general council, and certified by the superintendent.

[22 FR 10539, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

§89.12 Negotiation by tribal business committee.

A tribal business committee, advisory board, or other similar representative body having standing authority to act for and in behalf of the tribe in matters of importance, may, when it finds that there is a substantial need and demand for retention of tribal counsel, negotiate with an attorney or attorneys.

[22 FR 10539, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

§89.13 Limitation of authority.

The tribal business committee or other representative body, when proceeding under §89.12 should carefully investigate, with the assistance of the superintendent if desired, the qualifications of available attorneys, bearing in mind the purpose for which counsel is desired and except as provided in §89.14 shall carry on its negotiations with attorneys subject to the distinct understanding that final action on the selection and employment of counsel shall be had in a general council or meeting of the tribe or as otherwise provided under §89.15, subject to approval by the Secretary of the Interior or his authorized representative as required by law.

[27 FR 11549, Nov. 24, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§89.14 Employment by tribal business committees.

In case the tribal business committee or board has specific authority from the tribe to employ tribal attorneys and to execute a contract for that purpose, the tribal business committee or board may negotiate with attorneys and enter into a contract subject to approval of the Secretary of the Interior

or his authorized representative as provided by law.

[27 FR 11549, Nov. 24, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.15 Vote by secret ballot.

Those tribes accustomed to act on important tribal matters by secret ballot or by vote in district meetings, or in some other manner, may apply through their proper officers to the Area Director for permission to consider and act upon employment of tribal counsel in the manner preferred by the tribe rather than by a general council or meeting.

[27 FR 11549, Nov. 24, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.16 Notice from the tribe.

Notice of intention to negotiate with attorneys should be sent to the superintendent by the proper tribal officers, accompanied by a full statement concerning the need for retaining counsel, showing in detail the purposes for which an attorney is needed, the scope of his intended employment, and a reference to the tribal funds, if any, which the tribe believes should be made available for payment of counsel fees and expenses. The notice and statement should be transmitted to the Area Director by the Superintendent with the latter's report and recommendations.

[27 FR 11549, Nov. 24, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.17 Notice from attorneys.

Attorneys desiring to execute contracts with Indian tribes shall be required to give written notice directed through the superintendent to the Area Director in advance of all negotiations.

[27 FR 11549, Nov. 24, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.18 Tentative form of contract.

A tentative form of contract may be obtained from any agency office, area office, or the Commissioner of Indian Affairs. When the attorney or tribe proposing to execute a contract desires to make substantial changes in the tentative form, the proposed changes should be submitted through the superintendent to the Area Director for approval as to form prior to execution of a contract.

[27 FR 11549, Nov. 24, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.19 Execution in quintuplicate.

The contract should be executed in quintuplicate, and all copies should be transmitted by the superintendent to the Area Director.

[27 FR 11549, Nov. 24, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.20 Report of superintendent.

The superintendent should submit a report when transmitting the contract, setting forth the qualifications and general reputation of the attorney selected, based upon references and independent inquiry by the superintendent, and the superintendent's recommendation concerning approval of the contract.

[22 FR 10539, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.21 Copies of approved contracts.

The original of all approved contracts will be retained by the Area Director with a copy to the tribal governing body, attorney, Superintendent and Commissioner. The Commissioner's copy should be completely supported by copies of the recommendation of the Superintendent or Officer in Charge, Regional Solicitor's or Field Solicitor's opinions, and any other pertinent data which will permit the records of the Commissioner's office to reflect the full current status of approved attorney contracts in each instance.

[27 FR 11549, Nov. 24, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.22 Qualifications of attorneys.

The person selected as attorney should be a reputable member of the bar, and fully competent to carry the case through the Court of Claims, and to the Supreme Court of the United States, if necessary.

[22 FR 10539, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.24 Fees and expenses.

Under rulings of the Comptroller General and section 27 of the act of

May 18, 1916 (39 Stat. 158; 25 U.S.C. 123), tribal funds held in the United States Treasury may not be used for payment of attorney fees and expenses, in the absence of express authorization by Congress. Unless congressional authority has been obtained for the use of tribal funds, the payment of attorney fees and expenses shall be contingent upon a recovery by the Indians in the matters or claims covered in the contract. In case congressional authority has been obtained for the use of tribal funds for attorney fees and expenses, the provisions of the contract concerning the payment of such fees and expenses should strictly conform to the provisions of the act authorizing the use of the funds.

[22 FR 10539, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

§89.25 Invalid contracts.

The following is especially pointed out. 25 U.S.C. 81 provides further that all contracts made in violation of that section shall be null and void. Under 25 U.S.C. 84 and Reorganization plan No. 3 of 1950, 5 U.S.C. 481 note, no assignment of any such contract shall be valid without the consent of the Secretary of the Interior or his authorized representative. 25 U.S.C. 85 declares that no contract with any individual Indian relating to tribal property shall have any validity unless the consent of the United States has previously been given thereto.

[25 FR 1689, Feb. 26, 1960. Redesignated at 47 FR 13327, Mar. 30, 1982]

§89.26 Governing bodies without express authority to contract.

In the following cases, the entity or spokesman officially recognized as having authority to act for a tribe may both negotiate and conclude contracts for the services of legal counsel pursuant to applicable provisions of this part:

(a) In the absence of tribal governing documents, or

(b) When such documents do not expressly authorize the governing body of a tribe to conclude such contracts and do not provide for calling a tribal meeting to authorize concluding such contracts pursuant to §89.8, and convening a tribal general council is not deemed feasible.

[37 FR 10440, May 23, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

FIVE CIVILIZED TRIBES

§89.30 Contents and approval of contracts.

All contracts for the services of legal counsel or technical specialists negotiated and executed with the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes or Nations, also known as the Five Civilized Tribes, shall be in strict compliance with the requirements of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81).

[37 FR 10440, May 23, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

§89.31 Negotiation of contract.

That person or governing entity recognized as having authority to act for and in behalf of any one of the Five Civilized Tribes in matters of importance may, when it is found there is a substantial need and demand therefor, negotiate and contract for services of a tribal counsel or counsels and technical specialist or specialists, subject to the approval of the Secretary of the Interior or his authorized representative.

[37 FR 10440, May 23, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

§89.32 Notice from the principal officer.

Notice of intention to negotiate with attorneys or with technical specialists shall be sent by the principal tribal officer to the Superintendent. Such notice shall be accompanied by a full statement concerning the need for retaining counsel or specialists, as the case may be, the purpose for which such assistance is needed and the scope of the intended employment. The notice and statement shall be transmitted to the Area Director by the Superintendent together with the latter's report and recommendations with respect to the approval of such contract.

[37 FR 10440, May 23, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.33 Notice from attorney.

Attorneys desiring to execute contracts with any one of the Five Civilized Tribes shall be required to give written notice to the Area Director through the Superintendent having jurisdiction over said tribe.

[37 FR 10440, May 23, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.34 Tentative form of contract.

The principal officer of any one of the Choctaw, Cherokee, Creek, Seminole, and Chickasaw Tribes may, if he desires, obtain a tentative form of contract by written application to the office of the appropriate Agency Superintendent. Requests for forms for an attorney contract should include a statement reciting whether the attorney is desired as a general legal counsel in connection with the business of the tribe or as counsel in respect to specific problems on which legal counsel is desired, or specific matters requiring representation in court or before committees of Congress and the Departments of Government. Requests for forms for technical service contracts should include a statement of the particular type of service required and the purpose for which it is needed. The anticipated term of each proposed contract should be stated.

[37 FR 10440, May 23, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.35 Execution in quintuplet.

The contract should be executed in quintuplet, and all copies of it shall be transmitted by the Superintendent to the Area Director.

[37 FR 10440, May 23, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

PAYMENT OF TRIBAL ATTORNEY FEES WITH APPROPRIATED FUNDS

SOURCE: 48 FR 3969, Jan. 28, 1983, unless otherwise noted.

§ 89.40 General policy.

In ordinary circumstances, legal services with respect to trust resources are provided for Indian tribe(s):

(a) By private counsel employed by tribes when such tribe is financially able and elects to do so, or

(b) By the United States as trustee through the Office of the Solicitor and/or the Department of Justice.

It is the policy of the Department of the Interior not to use federally appropriated funds to pay for private counsel to represent Indian tribes. Exceptions to that policy are listed in § 89.41 of this part.

§ 89.41 Exceptions to policy.

The Assistant Secretary—Indian Affairs upon concurrence of the Solicitor and receipt of a recommendation as provided by § 89.43 may, in his/her discretion, authorize the direct or indirect expenditure of appropriated funds to pay reasonable attorney's fees in order to permit an Indian tribe to secure private legal representation in the following circumstances:

(a) When a tribe determines it necessary to bring a court action or to defend itself to protect its trust resources, rights claimed under a treaty, agreement, executive order, or statute, or its governmental powers and the Attorney General refuses assistance or advises that assistance is not otherwise available (Comptroller General's Opinion B–114868, December 6, 1976).

(b) When a tribe determines it necessary to institute or to defend itself in an administrative proceeding to protect its trust resources, rights claimed under a treaty, agreement, executive order, or statute, or to protect its governmental powers and the Solicitor is unable to provide representation due to a conflict of interest or other reasons.

(c) When a tribe determines legal assistance necessary, other than for litigation, pursuant to a contract executed under Pub. L. 93–638 and the Solicitor has determined that the services of his office are not available.

(d) When a tribe determines it critical, and the Assistant Secretary—Indian Affairs finds the concerns of the tribe to have merit after consultation with and the advice of the Solicitor, to intervene, in a lawsuit being handled by the Justice Department or in an administrative proceeding being handled by the Solicitor because the responsible Government Attorney refuses either to exclude or to include some facet of the suit or proceedings which

the tribe claims renders such legal representation completely inadequate to protect or in contravention of the rights and interests of the tribe. Prior to consulting with and advising the Assistant Secretary—Indian Affairs, in a lawsuit being handled by the Justice Department, the Solicitor shall seek the comments and advice of the Attorney General.

(e) When a tribe determines, and the Assistant Secretary—Indian Affairs, after consultation with the Solicitor concurs, that a substantial possibility of a negotiated settlement or agreement exists.

(f) Payment of fees will not be allowed if such payment was not authorized before services were performed.

(g) This rule applies to expenditure of appropriated Federal funds and not a tribe's own funds on deposit in the U.S. Treasury.

§89.42 Factors to be considered.

The following factors are to be considered in determining whether funds should be paid to provide private legal representation for a tribe.

(a) The merits of the legal position which the tribe asserts. Greater weight will be given to those cases where the tribe's legal argument is deemed particularly meritorious than to those cases where the tribe's position, although not entirely without merit, may be relatively weak;

(b) The ability of the tribe to pay all or a part of its legal expenses out of its own funds. A review of the tribe's financial resources under this subsection will include an examination of the tribe's total expenditures to determine whether its expenditures for other purposes comport with the asserted importance of the case for which it seeks funds;

(c) Whether the question the tribe seeks to litigate is being litigated in another case by another tribe;

(d) Whether, as a matter of strategy, the issues the tribe seeks to litigate could be more satisfactorily resolved in another forum, in a different factual context, or a different time; and

(e) Whether the issue should be litigated at all in preference to a legislative or other solution.

§89.43 Procedures.

The information collection requirements contained in this section do not require approval by the Office of Management and Budget under 44 U.S.C. 3051 *et seq.*, because it is anticipated there will be fewer than 10 respondents annually.

(a) A tribe or other organization seeking funds under §89.41 shall submit a written request through the Agency Superintendent and the Area Director, including

(1) A detailed statement describing the nature and scope of the problems for which legal services are sought;

(2) A statement of the terms, including total anticipated costs, of the requested legal services contract;

(3) A current financial statement and a statement that the tribe does not possess sufficient tribal funds or assets to pay for all or a part of the legal services sought; and

(4) A statement of why the matter must be handled by a private attorney as opposed to Department of Justice or Department of Interior attorneys.

All requests shall be considered by a committee consisting of the Deputy Assistant Secretary—Indian Affairs (Policy), or his delegate, the Director of the Office of Trust Responsibilities in BIA or his delegate, and the Associate Solicitor—Indian Affairs or his delegate.

(b) If two of the three committee members recommend approval of a tribe's request, the request, along with the committee's recommendation, shall be submitted to the Assistant Secretary for final determination after consultation with and the advice of the Solicitor. The committee's recommendation shall indicate the amount of funds recommended to assist the tribe, the hourly rate allowed, the maximum amount permitted to be expended in the recommended action and the tribal contributions, if any. The Assistant Secretary shall approve the request only with the concurrence of the Solicitor.

(c) The requirements imposed by this policy are supplementary to those contained in all existing regulations dealing with attorney contracts with Indian tribes and, in particular, those

contained in parts 88 and 89 of this title.

PART 90—ELECTION OF OFFICERS OF THE OSAGE TRIBE

GENERAL

Sec.
90.1 Definitions.
90.2 Statutory provisions.

ELIGIBILITY

90.21 General.

ELECTIONS

90.30 Nominating conventions and petitions.
90.31 Applicability.
90.32 Election Board.
90.33 Watchers and challengers.
90.35 List of voters.
90.36 Disputes on eligibility of voters.
90.37 Election notices.
90.38 Opening and closing of poll.
90.39 Voters to announce name and residence.
90.40 Ballots.
90.41 Absentee voting.
90.42 Absentee ballots.
90.43 Canvass of election returns.
90.44 Statement of supervisor.
90.45 Electioneering.
90.46 Notification of election of tribal officers.
90.47 Contesting elections.
90.48 Notice of contest.
90.49 Expenses of elections.

AUTHORITY: Sec. 9, 34 Stat. 539; sec. 7, 45 Stat. 1478; 71 Stat. 471, unless otherwise noted.

SOURCE: 23 FR 1948, Mar. 25, 1958; 23 FR 2026, Mar. 27, 1958, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

GENERAL

§ 90.1 Definitions.

As used in this part:

(a) The term *supervisor* means the tribal election official chosen and appointed by the Principal Chief or Assistant Principal Chief to act as chairman of the election board and shall in the absence of the supervisor denote the Assistant Supervisor.

§ 90.2 Statutory provisions.

Section 7 of the Act of March 2, 1929 (45 Stat. 1481) provides in part as follows:

That there shall be a quadrennial election of officers of the Osage Tribe as follows: A principal chief, an assistant principal chief, and eight members of the Osage tribal council, to succeed the officers elected in the year 1928, said officers to be elected at a general election to be held in the town of Pawhuska, Oklahoma, on the first Monday in June 1930 and on the first Monday in June each four years thereafter, in the manner to be prescribed by the Commissioner of Indian Affairs, and said officers shall be elected for a period of four years commencing on the 1st day of July following said elections. * * *

ELIGIBILITY

§ 90.21 General.

Only members of the Osage Tribe who will be eighteen years of age or over on election day and whose names appear on the quarterly annuity roll at the Osage Agency as of the last quarterly payment immediately preceding the date of election will be entitled to hold office or vote for any tribal officers. Each such voter shall be entitled to cast one ballot and each ballot shall have exactly the same value as the voter's headright interest shown on the last quarterly annuity roll. Any fraction of a headright, however, shall be valued as to the first two decimals only unless such interest is less than one-hundredth of a share, then it shall have its full value.

(45 Stat. 1481)

[43 FR 8798, Mar. 3, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

ELECTIONS

§ 90.30 Nominating conventions and petitions.

Conventions shall be held on or before the first Monday in April of the year in which a quadrennial election is held, and there shall be written reports of such conventions, duly certified by the secretary or presiding officer showing total number of qualified voters in attendance, together with the names of candidates nominated for the various offices: *Provided,* That at least 25 qualified voters shall have been in attendance at any such convention; also, names of any independent candidates nominated by petition of not less than 25 qualified voters, each signature to be witnessed by two persons, shall be filed with the supervisor not later than 5 p.m. on the first Monday in April of the

year in which a quadrennial election is held in order that such names may be placed on the official ballot. No person shall be considered a candidate for tribal office unless and until the requirements of this section have been met.

[32 FR 10253, July 12, 1967. Redesignated at 47 FR 13327, Mar. 30, 1982]

§90.31 Applicability.

The manner of carrying out elections to be held under the act of June 28, 1906 (34 Stat. 539), as amended by the act of March 2, 1929 (45 Stat. 1478), as amended by the act of August 28, 1957 (71 Stat. 471), is covered in the regulations set forth in this part. The next election will be held on the first Monday in June 1958 and subsequent elections will be held on the first Monday in June each four years thereafter.

§90.32 Election Board.

The Principal Chief, or in his absence, the Assistant Principal Chief shall, not more than seventy-five days nor less than sixty-five days preceding the day appointed by law for the holding of an election of officers of the Osage Tribe, issue in the form and manner prescribed in §90.37, an election notice and appoint an election board consisting of a Supervisor who shall be chairman, Assistant Supervisor, five judges, one of whom in addition to his regular duties shall act as interpreter, and five clerks, whose duties shall be to conduct the election as provided in the regulations in this part:

Provided further, That the Superintendent on the recommendation of the election board may designate extra clerical assistants. Prior to the date of the election, the election board shall assemble and make necessary arrangements for the election in a building to be designated by the Superintendent of the Osage Agency as the polling site and make the necessary preparation for receiving prospective voters, for receiving absentee ballots, and see to it that voting booths are arranged to afford privacy. Members of the election board and any extra clerical assistants designated by the Superintendent under authority contained in this section, other than employees of the Osage Agency when duly appointed or designated as provided for in this part may be compensated for conducting each quadrennial election at rates to be fixed by the Osage Tribal Council. If a member of the election board desires to be relieved from duty for any cause, he shall notify the Principal Chief or in his absence the Assistant Principal Chief, in writing to that effect and the Principal Chief, or in his absence the Assistant Principal Chief shall designate someone else to serve as a member of the election board. The Supervisor, or in his absence the Assistant Supervisor, shall see that the rules prescribed for conducting the election are faithfully carried out. The ballots shall be handed out by a judge to the voters as they present themselves to vote, after being identified by a clerk who shall be supplied with a copy of the list of voters prepared pursuant to §90.35. The judge before handing out a ballot shall remove the detachable portion. A judge shall receive the ballot after the voter has indicated his choice thereon by placing an ''X'' mark opposite the name of each candidate for whom he desires his vote counted and shall deposit same in the ballot box. The duties of the remaining judges in conjunction with the Supervisor will be to read the names on the ballot when requested so as to identify the candidates or furnish such other information as may be desired in that connection and also to assist prospective voters unable because of language difficulties or physical incapacity to cast votes for candidates of their choice, and to undertake such other duties as may be assigned by the Supervisor.

[27 FR 2458, Mar. 15, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§90.33 Watchers and challengers.

Any candidate or political party may name a person to act as watcher and challenger at any election provided for by the regulations in this part. Each watcher and challenger shall be appointed in writing by the candidate or political party he or she represents. The watchers and challengers shall have the right to be present in the polling place but outside the voting booths and to watch the election officials, the balloting, the call, the tally, and the recording of the result of the vote. It

shall be the duty of the watcher to watch, listen, and observe the count for all candidates voted for to insist upon an honest and fair count but shall have no further authority than to have the election judges and clerks note or record any objections to the count and to challenge the result thereof. The challenger shall have the right to question any voter and his right to vote. Watchers shall not divulge or give out any intimation or information as to the count prior to announcement by the election board and shall be subject to the same rules governing the election board with regard to leaving and returning to the polling place. A watcher or challenger shall receive no compensation for his services.

[27 FR 2458, Mar. 15, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 90.35 List of voters.

The Superintendent of the Osage Agency shall compile a list of the voters of the Tribe who are qualified under § 90.21. Such list shall set forth only the name and last known address of each voter. The Superintendent shall furnish copies of the list to the Supervisor of the election board and shall post copies at the headquarters of the Osage Agency at Pawhuska, Okla., and such other places as the election board may determine to be appropriate. The compilation, posting and distribution of copies to the Supervisor of the election board shall be done as soon as possible after preparation of the last quarterly annuity roll preceding the election. Copies of the list shall also be made available to all qualified candidates for office and for the purpose of checking off the name of each voter as his ballot is cast and for determining, in the event of question, the right of any individual to vote.

[27 FR 2458, Mar. 15, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 90.36 Disputes on eligibility of voters.

(a) The election board shall fix a date not less than five days before the election at which time all complaints will be heard. The election board shall, at least three days before the date of election, determine any claim or challenge as to the right of any person to be listed on the roll of eligible voters.

(b) Any voter of the tribe shall have the right to challenge any person presenting himself to vote and it shall be the duty of the supervisor and a judge of the board to make such investigation then and there as they deem essential, and decide the question of whether or not a person is a listed voter.

§ 90.37 Election notices.

The election notice shall set forth the place, date and time for holding the election, qualification of voters, method of nominating candidates, and closing date for same, method of locating each name on the ballot and the names of each member of the election board. As soon as possible a copy of the notice of the election, after approval by the Superintendent of the Osage Agency, shall be mailed to each qualified voter at his last known address.

§ 90.38 Opening and closing of poll.

The poll shall remain open without intermission from 8 a.m. to 8 p.m. on the date of the election. When all else is in readiness for the opening of the poll the supervisor shall open the ballot box in view of the other election officers, shall turn same top down to show that no ballots are contained therein, and shall then lock the box and retain the key in his possession.

[32 FR 10253, July 12, 1967. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 90.39 Voters to announce name and residence.

Each voter shall upon presenting himself to vote announce to the clerk his name, and address.

§ 90.40 Ballots.

The Superintendent of the Osage Agency shall have ballots printed showing the name and the office for which each candidate has been nominated and also space for showing the value of the respective ballots. The Superintendent shall have recorded on a detachable portion of each ballot the name of the voter. The value of each voter's ballot shall be recorded on the principal portion of the respective ballots. Any faction or group has the right

to nominate any candidate it chooses, in accordance with the regulations prescribed in this part. The names of such candidates shall be printed on the ballot in the manner set forth as follows:

(a) Under the heading, Principal Chief, with notation to vote for one, shall appear names of all candidates for that office. Under the heading, Assistant Chief, with notation to vote for one, shall appear the names of all candidates for that office. Under the heading, Members of Council, with notation to vote for eight, shall appear names of all candidates for council. Names of candidates for office shall appear only once on ballot, regardless of the fact that they may have been nominated on more than one ticket. The order in which names of qualified candidates for office will be placed on the ballot shall be by lot method of drawing in a manner to be determined by the tribal council, and to be free from or regardless of party or factional affiliations. A candidate may use one nickname. Titles and professional designations will not be shown on the ballot. A record shall be kept of any ballots that may be mutilated, canceled, or used as samples.

(b) A space will be provided on each ballot in which the clerk prior to issuing the ballot shall note the value of the ballot which shall be exactly the same value as the voter's headright interest as shown on the last quarterly annuity roll, except any fraction of a headright shall be valued as to the first two decimals only unless such interest is less than one one-hundredth then it shall have its full value. As verification the clerk shall initial the ballot so numbered in the margin. In addition each ballot shall be stamped ''Official Ballot'' (facsimile signature Supervisor Osage Election Board). Should any voter spoil or mutilate his ballot in his effort to vote he may surrender the ballot to the supervisor who shall give the voter in lieu thereof another ballot which shall show its appropriate value. The spoiled or mutilated ballot or any portion of a spoiled or mutilated ballot shall be retained with other records pertaining to the election.

[32 FR 10253, July 12, 1967. Redesignated at 47 FR 13327, Mar. 30, 1982]

§90.41 Absentee voting.

(a) An eligible voter who will be unable to appear at the poll in Pawhuska on election day shall be entitled to vote by absentee ballot. Absentee ballots shall be identical to the ballots described in §90.40 with the exception that each such ballot shall be stamped ''Absentee Ballot,'' and reflect the date of issuance. All applications for absentee ballots shall be made in writing by the voter. Each ballot shall indicate the value of the vote to which the voter is entitled. The supervisor shall maintain a file of all applications, together with a record of the names and addresses of all persons to whom absentee ballots are mailed or delivered, including the date of mailing or delivery. All absentee ballots must be postmarked and be in the Pawhuska Post Office prior to 8 a.m. on election day.

(b) It shall be the duty of the supervisor, upon receipt of an application, to mail or deliver to the applicant an envelope containing a ballot (after removing the detachable portion), and an inner and outer envelope as described herein. This shall be done not more than 30 days before the election, except that the envelopes and ballots may be mailed to absentee voters residing outside the continental limits of the United States at any time after mailing of the election notice.

(c) If the absentee ballot and accompanying envelopes are to be mailed to the prospective voter, the written request must be submitted to the supervisor on or before 5 p.m. of the Wednesday preceding the election. The absentee ballot and accompanying envelopes may be delivered personally to the prospective voter any time prior to the opening of the poll.

(d) The absentee voter shall mark the ballot and seal it only in the inner envelope. The following shall be printed on the inner envelope:

ABSENTEE BALLOT

ELECTION OF OFFICERS OF THE OSAGE TRIBE

JUNE __, 19__

(e) The absentee voter shall enclose the inner envelope in the outer envelope and after sealing same shall execute the certificate imprinted thereon which certificate shall be in the following form:

I will be unable to appear at the poll in Pawhuska, Oklahoma, on the ___ day of June 19__ and have enclosed my ballot for the election of officers of the Osage Tribe.[1]
(Voter's signature)_____.

The outer envelope shall be preaddressed as follows: Supervisor, Osage Election Board, Post Office Box ____, Pawhuska, Okla. 74056.

(45 Stat. 1481)

[23 FR 1948, Mar. 25, 1958; 23 FR 2026, Mar. 27, 1958, as amended at 43 FR 8799, Mar. 3, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 90.42 Absentee ballots.

The absentee ballots shall remain in the locked box in the post office, Pawhuska, Okla., until 8 a.m. on the day of election at which time the supervisor or assistant supervisor of the election board, accompanied by the Superintendent of the Osage Agency or his designated representatives, shall receive the locked box from the post office and shall personally transport the locked box to the polling site where it shall be delivered immediately to the supervisor or assistant supervisor of the election board. The supervisor or the assistant supervisor in the presence of at least two judges shall unlock the locked box containing the absentee ballots and shall then determine whether the person whose name is signed to the statement is a qualified voter of the Osage Tribe and check said voter off the poll list before opening the outer envelope. After it has been determined which of the absentee ballots have been cast by duly qualified electors, the supervisor in the presence of the election board shall cause the valid ballots in the sealed inner envelopes to be placed in the ballot box.

[32 FR 10254, July 12, 1967. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 90.43 Canvass of election returns.

(a) Immediately after the polls are closed at 8 p.m., the counting of the ballots shall commence. The supervisor and not less than two judges shall remain continuously in the room until the ballots are finally counted. One or more judges shall act as official counters and two or more clerks shall record the value of each vote and shall comprise a vote tallying team. The vote shall be recorded on two tally sheets by each team of judges and clerks under the name of each candidate for whom the voter designated his choice. The count shall continue until all votes have been recorded. The duties of the remaining officials of the election board will be to assist in conducting the election. After the vote of each ballot is recorded, the ballot shall be pierced by needle and string and after the ballots have been so counted, the ends of the string shall be tied together. After all other ballots have been counted, the sealed inner envelopes containing the absentee ballots shall be opened and all ballots found to be valid shall be counted and treated in the same manner as other valid ballots. All ballots and mutilated ballots; registration lists of voters, both absentee and those appearing at the poll; all tally sheets; and all other election materials shall be placed in the ballot box which shall be locked. The supervisor shall then deliver the locked ballot box and keys to same to the Superintendent, Osage Agency, and the box shall be retained in a safe place until opened by order of the supervisor or election board in the event a contest is filed. If no contest is filed, the ballots shall be destroyed 180 days after the election. No information concerning voting shall be posted or made public information until after 8 p.m.

(b) Should any ballot be marked for more than one principal chief or assistant chief or for more than eight councilmen, only that section of the ballot wherein the error was made shall be declared void and the remaining section or sections shall be counted in the

[1] Criminal penalties are provided by statute for knowingly filing false information in such statements (18 U.S.C. 1001).

same manner as other ballots. Absentee ballots shall be declared void when items other than the ballot are enclosed in the inner envelope, the voter fails to sign the statement appearing on the outer envelope, and for failure to seal the inner envelope or enclose the inner envelope in the outer envelope. Votes cast for individuals whose names are not printed on the official ballot shall not be counted.

[32 FR 10254, July 12, 1967, as amended at 43 FR 8799, Mar. 3, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

§90.44 Statement of supervisor.

Following the election a statement is to be prepared by the supervisor pertaining to the conduct of the election and certifying to the correct tabulation of the votes for each candidate. The statement shall also set forth the names of the elected candidates and the office to which each was elected. The statement shall be duly acknowledged before an officer qualified to administer oaths and delivered to the Superintendent of the Osage Agency.

[32 FR 10254, July 12, 1967. Redesignated at 47 FR 13327, Mar. 30, 1982]

§90.45 Electioneering.

No person shall be allowed to electioneer within the building where and when the election is in progress and it will be the duty of the supervisor to request the detail of a police officer to assist him in maintaining order about the building during the progress of the election.

§90.46 Notification of election of tribal officers.

The Superintendent of the Osage Indian Agency shall in due time give written notice to candidates of their election to the various tribal offices and as soon thereafter as practicable such tribal officers shall appear and subscribe to oath of office before an officer qualified to administer oaths and such oaths shall be delivered to the Superintendent and by him transmitted to the Commissioner of Indian Affairs.

§90.47 Contesting elections.

Any unsuccessful candidate may before noon on Monday next following the tribal election file with the supervisor a challenge to the correctness of the vote cast for the office for which he was a candidate, which challenge must be accompanied by a deposit of $500. The election board or the supervisor shall order a recount and proceed with same as provided in this part. If the recount results in the contestant being elected, the deposit shall be refunded; otherwise, the deposit shall be used to defray all expenses of said recount and any balance not so used shall be returned to the contestant.

[32 FR 10254, July 12, 1967. Redesignated at 47 FR 13327, Mar. 30, 1982]

§90.48 Notice of contest.

It shall be the duty of the supervisor, to serve upon the contestee, or contestees, directly affected by such challenge or contest, a true copy of said written application, the original of which is required to be filed with the supervisor. Said service shall be made in person, where possible, within twenty-four hours after the filing of said original challenge or contest, and where personal service is impossible within such time, on account of the absence of contestee, or contestees, from Osage County, or for any other reason, it is hereby made the duty of the supervisor to serve a true copy upon the Superintendent of the Osage Indian Agency:

Provided, That for the purpose of such constructive service, the Superintendent is hereby made and constituted the service agent of each and every candidate in all tribal elections, and by filing petition as a candidate, such candidate shall thereby be presumed conclusively to have accepted the terms and provisions hereof and specifically the constructive service as aforesaid.

§90.49 Expenses of elections.

All expenses of elections including compensation to the members of the election board and any clerical assistants designated by the Superintendent under §90.32, stationery supplies, meals, printing and postage shall be borne by the Osage Tribe as set forth in an appropriate Osage Tribal Council

resolution establishing current pay scale.

[27 FR 2459, Mar. 15, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

PART 91—GOVERNMENT OF INDIAN VILLAGES, OSAGE RESERVATION, OKLAHOMA

Sec.
91.1 Purpose.
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91.14 Confirmation of permits.
91.15 Suspension or amendment of regulations.

AUTHORITY: Subdivision 9 of sec. 2, sec. 12, Act of June 28, 1906 (34 Stat. 539), sec. 3, Act of June 24, 1938 (52 Stat. 1034). Interpret or apply Act of April 18, 1912 (37 Stat. 86).

SOURCE: 28 FR 10203, Sept. 18, 1963, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 91.1 Purpose.

The purpose of the regulations in this part is to establish policies and procedures for the government of Indian villages, Osage Reservation, Oklahoma.

§ 91.2 Definitions.

As used in this part:

(a) *Secretary* means the Secretary of the Interior or his authorized representative.

(b) *Superintendent* means the Superintendent or other officer in charge of Osage Agency.

(c) *Council* means the Osage Tribal Council, that elected governing body of the Osage Tribe of Indians.

(d) *Tribal Member* means any person of Osage Indian blood of whatever degree, allotted or unallotted.

(e) *Minor* means any person under 21 years of age.

(f) *Resident* means an adult tribal member who has resided in the village for thirty (30) days, in the 12-month period preceding the election.

§ 91.3 Description of village reserves.

The act of June 28, 1906 (34 Stat. 539), as amended by the act of June 24, 1938 (52 Stat. 1034), set aside certain tribal lands exclusively as dwelling sites for the use and benefit of the Osage Indians until January 1, 1984, unless otherwise provided by Act of Congress. These lands are described as follows:

(a) *Grayhorse Indian Village.* The southeast quarter (SE ½) of the southeast quarter (SE ¼), and the west half (W ½) of the southwest quarter (SW ¼) of the southeast quarter (SE ¼), and the south half (S ½) of the northeast quarter (NE ¼) of the southeast quarter (SE ¼) of the southwest quarter (SW ¼), and the south half (S ½) of the north half (N ½) of the northeast quarter (NE ¼) of the southeast quarter (SE ¼) of the southwest quarter (SW ¼), and the southeast quarter (SE ½) of the southeast quarter (SE ¼) of the southwest quarter (SW ¼) of sec. fifteen (15); and the north half (N ½) of the northeast quarter (NE ¼), and the northeast quarter (NE ¼) of the northwest quarter (NW ¼) of sec. twenty-two (22), all in township twenty-four (24) north, range six (6) east of the Indian meridian, and containing 197.5 acres, more or less.

(b) *Hominy Indian Village.* Lots Six (6) and Seven (7), and the East Half (E ½) of the Southwest Quarter (SW ¼) of Section Six (6) in Township Twenty-two (22) North, Range Nine (9) East of the Indian Meridian, and containing 160 acres, more or less.

(c) *Pawhuska Indian Village.* Lots One (1) and Two (2), and the South Half (S ½) of the Northeast Quarter (NE ¼) of Section Three (3) in Township Twenty-five (25) North, Range Nine (9) East of the Indian Meridian, and containing 160 acres, more or less.

[28 FR 10203, Sept. 18, 1963, as amended at 33 FR 8270, June 4, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]

§91.4 Plats of village reserves.

Plats of the Grayhorse Indian Village, the Pawhuska Indian Village, and the Hominy Indian Village, certified by Ralph M. Tolson, Registered Engineer, on July 5, 1966, are the official plats of dedication of said villages and shall be filed of record with the county clerk of Osage County, State of Oklahoma.

[33 FR 8270, June 4, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]

§91.5 Tracts reserved from selection by individuals.

The following described tracts, as shown on the plats of the three villages, are reserved from selection by individuals and are set aside for sepultural use or for public use by tribal members:

(a) Grayhorse Indian Village:

(1) Public Squares.

(2) Parks, and

(3) Cemetery.

(b) Hominy Indian Village:

(1) Public squares.

(2) Cemetery, and

(3) Lot 1 in block 1 set aside for religious and educational purposes to the Society of Friends, its Associate Executive Committee of Friends on Indian Affairs and its or their representative at Hominy, Okla., by Resolution of the Osage Tribal Council dated June 6, 1956, and approved by the Assistant Secretary of the Interior, September 7, 1956.

(c) Pawhuska Indian Village:

(1) Wakon Iron Square.

(d) Those individuals who have summer homes or dance arbors located on the Public Square of the Hominy Indian Village shall be permitted to retain said summer homes or dance arbors during their lifetimes if they are maintained in a condition satisfactory to the Hominy Indian Village Committee. Following the owner's death, the improvements shall be removed within ninety (90) days or become the property of the Hominy Indian Village.

[33 FR 8270, June 4, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]

§91.6 Custody of public buildings and tracts reserved from selection by individuals; village committees.

Each of the three (3) villages described herein shall organize a village committee to provide for the health, safety and welfare of its inhabitants, for the maintenance of tribal property, and to serve as custodian and manager of tribal property and improvements located within said village except that tract described in §91.5(b)(3). Each village committee shall be composed of five (5) members, domiciled in the village, one of whom shall be designated by the committee as chairman. The committees shall be elected biennially by the residents of the villages, except in the Grayhorse Indian Village where the committee shall be appointed by the Council from among those tribal members residing in or historically associated with the village. The procedure for initial committee elections shall be established by the Council. Each village committee shall prepare a constitution and by-laws to be approved by the Council and the Superintendent before said committee will have any authority to govern, and any changes or amendments thereto must likewise be approved by the Council and the Superintendent. All actions of the committee are subject to appeal to the Council whose decision shall be final: *Provided*, That such committee shall have no control or authority to grant permission for the use of tribal property described in §91.5 for the holding of dances. Such authority shall remain in the Council and any group or individual using the property for dance purposes without the written permission of the Council shall be in violation of these regulations: *Provided, further*, That the village committee shall not permit the use of any of the tracts described in §91.5 in any manner that would conflict with Council authorization for dance purposes.

§91.7 Permits to occupy land for dwelling purposes.

The issuance of permits for the use of land for dwelling purposes within any village reserve described in §91.3 except tracts reserved for specific purposes by

§ 91.5 will be under the jurisdiction of the Superintendent. Permits may be issued only to tribal members upon application to the Superintendent: *Provided,* That only one permit shall be issued to any one individual and that erection of a dwelling house shall be started on such land within six (6) months from date of approval of the permit or such permit shall be automatically terminated except that upon written application the Superintendent may extend such permit for an addition six (6) months: *Provided, further,* That only one dwelling shall be constructed under any one permit. Permits shall be issued for the use of one to three contiguous lots, depending upon the quality and permanency of the improvements to be placed thereon. Permits issued under this section shall be made in duplicate in a manner to be prescribed by the Superintendent. The original copy shall be filed in the Branch of Realty, Osage Agency, and the duplicate copy shall be mailed to the permittee.

[33 FR 8270, June 4, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 91.8 Sale or mortgage of improvements.

No improvements located within the village reserves described in § 91.3 shall be sold, mortgaged, transferred or assigned without the approval of the Superintendent.

(a) Improvements may be mortgaged for home improvements or the erection of new improvements. Such mortgages shall be made with acceptable lending agencies and shall be approved by the Superintendent. The lending agency shall have the right:

(1) To foreclose the mortgage and to sell the improvements within six (6) months of the date of foreclosure judgment to any eligible tribal member with the understanding that the use of the land on which the improvements are situated shall be transferable to the new owner; or

(2) To foreclose the mortgage and to sell the improvements to a non-tribal member, who shall remove the improvements from the village reserve within six (6) months of the date of sale. In the event of removal of the mortgaged property, it shall be the responsibility of the lending agency to level the land on which such improvements were located and to remove all debris, sidewalks, etc., leaving the premises in an orderly condition. Failure to make such disposition within the time stated in this paragraph shall result in forfeiture of the improvements to the village committee.

(b) Improvements may be sold by the owner thereof with the approval of the Superintendent. Sale of such improvements shall be accomplished by bill of sale executed by the owner in triplicate who shall file all copies with the Superintendent. If the purchaser of such improvements is a member of the Osage Tribe, the bill of sale shall be accompanied by a relinquishment of the permit in favor of the vendee for the occupancy of the land on which such improvements are located. If the purchaser is not a member of the Osage Tribe, such purchaser shall be required to endorse an agreement on the reverse of all copies of the bill of sale that he will:

(1) Remove the improvements from the village reserve within six (6) months of date of approval of the bill of sale;

(2) Transfer the title thereof as provided in this section to a tribal member who is eligible; or

(3) Failing to make such disposition within the time stated forfeit title to the village committee.

(c) Upon approval of the bill of sale by the Superintendent, the original or certified copy shall be filed in the Branch of Realty, Osage Agency, the duplicate copy mailed to the purchaser, and the triplicate copy mailed to the seller.

§ 91.9 Inheritance of improvements.

(a) Upon the death of the owner of improvements in a village reserve, such improvements shall, in probate matters, be subject to the jurisdiction of the county courts, State of Oklahoma, and shall be subject to inheritance or bequest in accordance with applicable State and Federal laws. The land within a village reserve is held in trust for the benefit of tribal members and is not subject to inheritance or purchase.

(b) When such improvements or interests therein are inherited by or bequeathed to a non-tribal member, he or she shall dispose of such improvements in the manner provided for disposition of improvements by purchaser under §91.8: *Provided,* That when such non-tribal member is a legally adopted minor child such child may continue to occupy the land during its minority: *Provided, further,* That when such non-tribal member is the surviving spouse such individual, so long as he or she remains single may continue to occupy the land during his or her lifetime or may sell the improvements as provided herein and may receive a proceeds therefrom. In the event such surviving spouse remarries, the right to continuous occupancy of the land pursuant to this §91.9 shall terminate and such surviving spouse shall make disposition of such improvements as provided for purchasers in §91.8. If upon the death of the surviving spouse title to the improvements vests in a non-tribal member, they shall be sold as provided in §91.8 and the proceeds distributed to the persons entitled thereto.

(c) Improvements inherited by tribal members may be occupied or rented in accordance with §91.10: *Provided,* No tribal member shall be issued more than two permits or own more than two sets of improvements, one of which must be inherited property and one occupied by the tribal member: *Provided, further,* No tribal member shall be permitted to retain more than one set of improvements for rental. If this provision is violated, the tribal member will have three years, from the date of written notice from the Superintendent that such provision has been violated, within which to dispose of the surplus property in accordance with §91.8.

§91.10 Renting of improvements.

The Superintendent may issue a certificate of permission to rent for a period of one (1) year improvements located on land held under valid permit, subject to renewal in the discretion of the Superintendent, upon written application by the owner of such improvements and the prospective tenant: *Provided,* That such prospective tenant is a tribal member and the property to be rented is that heretofore occupied or inherited by the owner. Certificates of permission issued under this section may be withdrawn upon 30-day notice to the tenant by the Superintendent and such tenant expelled from the village reserve. The application and certificate of permission on a form to be prescribed by the Superintendent shall be made in triplicate and all copies forwarded to the Superintendent for action. Upon approval by the Superintendent, the original copy of the application and certificate shall be filed in the Branch of Realty, Osage Agency, the duplicate copy of each forwarded to the owner, and the triplicate copy of each forwarded to the tenant.

§91.11 Domestic animals in village reserves.

(a) No livestock shall be permitted to trespass in any village reserve except that unassigned lots or unplatted areas enclosed by adequate fences may be leased by the village committee with the approval of the Superintendent and the proceeds therefrom credited to the account of the village committee. Trespassing livestock may be impounded by the village committee. The village committee shall give notice of impoundment to the owner of the animal, if known, by certified mail or by posting in the village square. The notice shall advise the owner that a $10 charge shall be assessed per day for each animal impounded and a reasonable charge for forage consumed and that the animal or animals shall be sold at the expiration of twenty (20) days from the date of mailing or posting the notice. In the event an animal is sold, the balance after deducting $10 per day for impoundment and a reasonable forage charge, shall be deposited at the Osage Agency and the owner may claim said funds if satisfactory proof of ownership is presented to the Superintendent of the Osage Agency within six (6) months of the date of sale. After six (6) months, any funds remaining on deposit will become the property of the village in which the animal was trespassing.

(b) No horses, mules, bovine, hogs, sheep, or goats shall be penned on assigned lots.

[33 FR 8270, June 4, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 91.12 Business enterprises and public buildings.

No permanent business enterprises shall be carried on within the boundaries of a village reserve and no public buildings shall be erected on lands within the boundaries of a village reserve except on tracts described in § 91.5 maintained for the use and benefit of tribal members. The construction or acquisition of dwellings for rental purposes is prohibited. The village committee may grant permission and charge fees for temporary concessions within the village reserve during Indian celebrations, dances, community gatherings, etc., such temporary permits to last only for the term of activities for which granted.

§ 91.13 Health, sanitation, and sewerage disposal.

Health, sanitation, and sewerage disposal problems within the village reserves shall be subject to and controlled by applicable County and State laws.

§ 91.14 Confirmation of permits.

The Superintendent shall prepare a certified list of all current permittees with a description of lots held, which descriptions shall conform to the plats certified July 5, 1966. Said list shall be served by certified mail on the individual permittees and the village committee chairman and shall be posted at the Osage Agency and each of the three village squares. Unless a protest is filed with the Superintendent within ninety (90) days of the mailing and posting, said certified list of assigned lots and the individual permittees shall be final and conclusive. Protests may be filed by tribal members claiming an interest in an assigned lot and such protest shall be determined by the Superintendent after notice and hearing.

[33 FR 8271, June 4, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 91.15 Suspension or amendment of regulations.

The regulations in this part may be suspended or amended at any time by the Secretary of the Interior: *Provided*, That such amendments or suspension shall not serve to change the terms or conditions of any mortgage approved in accordance with § 91.8(a).

SUBCHAPTER G—FINANCIAL ACTIVITIES

PART 101—LOANS TO INDIANS FROM THE REVOLVING LOAN FUND

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AUTHORITY: 25 U.S.C. 1469.

SOURCE: 40 FR 3587, Jan. 23, 1975, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§101.1 Definitions.

As used in this part 101:

Applicant means an applicant for a United States Direct Loan from the revolving loan fund or a loan from a relending organization.

Commissioner means the Commissioner of Indian Affairs or an authorized representative.

Cooperative association means an association of individuals organized pursuant to state, Federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized as a corporation pursuant to state, Federal, or tribal law, with or without stock, for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to:

(1) Make scheduled payments on a loan when due,

(2) Obtain the lender's approval for disposal of assets mortgaged as security for a loan, or

(3) Comply with the covenants, obligations, or other provisions of a loan agreement.

Economic enterprise means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

Equity means the borrower's residual ownership, after deducting all business debt, of tangible business assets used in the business being financed, on which a lender can perfect a first lien position.

Financing statement means the document filed or recorded in county or state offices pursuant to the provisions of the Uniform Commercial Code notifying third parties that a lender has a lien on the chattels and/or crops of a borrower.

Indian means a person who is a member of an Indian tribe as defined in this part.

Organization means the governing body of any Indian tribe, or entity established or recognized by such governing body for the purpose of the Indian Financing Act.

Other organization means any non-Indian individual, firm, corporation, partnership, or association.

Partnership means a form of business organization in which two or more legal persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain, organized pursuant to tribal, state, or Federal law.

Reservation means Indian reservation, California rancheria, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by Alaska Native groups incorporated under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Revolving loan fund means all funds that are now or hereafter a part of the revolving fund authorized by the Act of June 18, 1934 (48 Stat. 986), the Act of June 26, 1936 (49 Stat. 1968) and the Act of April 14, 1950 (64 Stat. 44), as amended and supplemented including sums received in settlement of debts for livestock pursuant to the Act of May 24, 1950, (64 Stat. 190) and sums collected in repayment of loans made, including interest or other charges on loans, and any funds appropriated pursuant to Section 108 of the Indian Financing Act of 1974 (88 Stat. 77).

Secretary means the Secretary of the Interior.

Tribe means any Indian tribe, bank, nation, rancheria, pueblo, colony or community, including any Alaska Native village or any regional, village, urban or group corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), as amended, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

[57 FR 46471, Oct. 8, 1992]

§ 101.2 Kinds of loans.

Loans from the Indian Revolving Loan Fund shall be made for purposes which will improve and promote the economic development on Indian reservations.

(a) Loans may be made by the United States to eligible relending organizations for relending to members for economic enterprises and to eligible tribes for relending to members, eligible corporations, cooperative associations, partnerships and subordinate bands and for financing tribal economic enterprises, which will promote the economic development of a reservation and/or the group or members thereon. Loans made by tribes or relending organizations may be for the following purposes:

(1) To individual Indians or Natives, cooperative associations, corporations and partnerships, to finance economic enterprises operated for profit, the operation of which will contribute to the improvement of the economy of a reservation and/or the members thereon.

(2) To individual Indians or Natives for purposes of purchasing, constructing or improving housing on a reservation and to be occupied by the borrower.

(3) To individual Indians and Natives for purposes of obtaining a college or graduate education and degree in a field which will provide employment opportunities, provided that adequate funds are not available from sources such as grants, scholarships or other loan sources.

(4) To individual Indians and Natives for purposes of attending vocational schools which provide training in desired skills in a field in which there are employment opportunities, provided that adequate funds and/or training are not available from grant or scholarship sources, or federal or state training programs.

Loans may also be made by the United States to tribes for loaning to or investing in other organizations subject to the provisions in paragraph (d) of this section.

(b) Direct loans may be made by the United States to eligible tribes, tribal organizations or corporations and tribal cooperative associations without fund restrictions. Direct loans to individual Indians, partnerships, and other non-tribal organizations shall not exceed $350,000. Direct loans from the United States shall be made for the following purposes:

(1) To eligible tribes, individual Indians, Natives, or associations thereof, corporations and partnerships, to finance economic enterprises operated for profit, the operation of which will contribute to the improvement of the economy of a reservation and/or the members thereon.

(2) To individual Indians and Natives for purposes of purchasing, constructing or improving housing on a reservation and to be occupied by the borrower.

(3) To individual Indians and Natives for purposes of obtaining a college or

graduate education and degree in a field which will provide employment opportunities, provided that adequate funds are not available from sources such as grants, scholarships or other loan sources.

(4) To individual Indians and Natives for purposes of attending vocational schools which provide training in desired skills in a field in which there are employment opportunities, provided that adequate funds and/or training are not available from grants or scholarship sources or federal or state training programs.

(c) Before a United States direct loan is approved, the Commissioner may require the applicants to prepare a market and capacity report on existing or proposed economic enterprises for which financing is requested if the operation involves manufacturing, selling or providing services.

(d) Loans may be made to eligible tribes and Indian organizations for use in attracting industries and economic enterprises, the operation of which will contribute to the economy of a reservation. Tribes and Indian organizations may receive loans from the revolving loan fund for investment in or lending to other organizations regardless of whether they are organizations of Indians. However, not more than 50 percent of the loan made to an Indian organization may be used for the purpose of making a loan to or investing in other organizations. Applications for loans to provide funds for lending to or investing in other organizations already in operation will be accompanied by:

(1) Audited balance sheets and operating statements of the other organization for the immediate three preceding years;

(2) Pro forma operating statement and balance sheets for the succeeding three years reflecting the results of operations after injection of the additional funds;

(3) Names of owners or if a corporation and stock has been issued, names of major stockholders and shares of stock owned by each;

(4) A copy of the articles of incorporation and bylaws, if incorporated, or other organization papers if not incorporated;

(5) Names of members of the board of directors and officers with a resume of education and experience, and the number of shares of stock owned by each in the corporation;

(6) Purposes for which loan or investment will be used; and

(7) If for manufacturing, selling or providing services, a market and capacity report will be prepared. If a proposed operation is to be established, the information in paragraphs (d)(2) through (7) of this section will be furnished. The Commissioner may require additional information on the other organization, if needed, to adequately evaluate the benefits which the Indian organization will receive and the economic benefits which will accrue to a reservation. If the loan is for relending to another organization, the application must show what security is being offered. If the loan is for investment in another organization, the equity to be obtained must be shown. Copies of all agreements, contracts or other documents to be executed by the Indian organization and the other organization in connection with a loan or investment shall be submitted with the application for a loan and will require Commissioner approval prior to disbursement of loan funds to the Indian organization.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34974, Aug. 23, 1989]

§ 101.3 Eligible borrowers under United States direct loan program.

(a) Loans may be made from the revolving loan fund to Indians, eligible tribes and relending organizations, and corporations, cooperative associations and partnerships having a form of organization satisfactory to the Commissioner. Loans may be made to applicants only when, in the judgment of the Commissioner, there is a reasonable prospect of repayment. Loans may be made only to an applicant who, in the opinion of the Commissioner, is unable to obtain financing on reasonable terms and conditions from other sources such as tribal relending programs, banks, Farmers Home Administration, Small Business Administration, Production Credit Associations,

or Federal Land Banks, and is also unable to obtain a guaranteed or insured loan pursuant to title II of the Indian Financing Act of 1974 (88 Stat. 77). In addition, the applicant will be required to have equity equal to 20 percent of the total cost of a new enterprise, or 20 percent of the total cost of expansion of an existing enterprise.

(b) The establishment of a United States direct revolving loan program on a reservation(s) for making direct loans will require the approval of the Commissioner. All requests for establishing a United States direct revolving loan program on a reservation will be accompanied by reasons for need, estimate of financing needs, and other sources of financing available to meet the needs. The Commissioner, in approving a United States direct loan program, may require the preparation and approval of a plan of operation for conducting the program.

(c) If local lending conditions and/or the information in an application for a loan indicate a probability that an applicant may be able to obtain the loan from other sources, the Commissioner, before approving a United States direct loan, will require the applicant to furnish letters from two customary lenders in the area who are making loans for similar purposes, stating whether or not they are willing to make a loan to the applicant for the same purposes and amount. If a customary lender will make the loan on reasonable terms and conditions, the Commissioner will not approve a United States direct loan.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34974, Aug. 23, 1989; 57 FR 46471, Oct. 8, 1992]

§ 101.4 Applications.

An applicant for a United States direct loan or a loan from a relending organization conducting a relending program under this part will submit an application on a form approved by the Commissioner. Applications shall include the name, current address and telephone number of the applicant(s); current and prior Taxpayer Identification Number—Employer Identification Number if a business entity, Social Security Number if an individual; and current employer's name, address, and telephone number; amount of the loan requested; purpose for which loan funds will be used; and security to be offered; period of the loan, assets, liabilities and repayment capacity of the applicant; budgets reflecting income and expenditures of the applicant; and any other information necessary to adequately evaluate the application. The borrower must sign a statement declaring no delinquency on Federal taxes or other Federal debt and borrower's good standing on dealings in procurement or non-procurement with the Federal Government. The Bureau will obtain a current credit bureau report and prescribe procedures to be used in handling loan proceeds. In addition, applications for loans to finance economic enterprises already in operation will be accompanied by:

(a) A copy of operating statements, balance sheets and budgets for the prior two operating years or applicable period thereof preceding submittal of the application;

(b) Current budget, balance sheet and operating statements; and

(c) Pro forma budgets operating statements and balance sheets showing the estimated results for operating the enterprise for two years after injection of the loan funds into the operation.

A resume of the applicant's management experience will be submitted with the application. Applications for loans and requests for advance of tribal trust funds for relending under the provisions of this part shall be accompanied by a declaration of policy and plan of operation or other acceptable plan for conducting the program. Applications for loans or modifications thereof, to establish, acquire, operate, or expand an economic enterprise shall be accompanied by a plan of operation. Declarations of policy or other plans for conducting a relending program and plans of operation for economic enterprises require the approval of the Commissioner before becoming effective. An application from a corporation, partnership or cooperative association, for a United States direct loan or a loan under a relending program for financing an economic enterprise must, in addition to financial statements and budgets, include a copy of documents establishing the entity, or the proposed

documents to be used in establishing it.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46471, Oct. 8, 1992]

§ 101.5 Approval of loans.

(a) Loan agreements, including those used by relending organizations in operating a relending program, must be executed on a form approved by the Commissioner. On direct United States loans, the Commissioner will approve the loan by issuing a commitment order covering the terms and conditions for making the loan.

(b) Applications for loans from relending organizations must be approved, if a tribe, by the governing body or designated committee, or other approving committee or body authorized to act on credit matters for a relending organization, before the Commissioner takes action on the application. This designated governing body of the tribe or committee must be authorized to act on behalf of the relending organization as evidenced in the organization's declaration of policy and plan of operation.

(c) Corporations, partnerships and cooperative associations organized for the purpose of establishing, acquiring, expanding, and operating an economic enterprise shall be organized pursuant to federal, state or tribal law. The form of organization shall be acceptable to the Commissioner. Economic enterprises which are or will be operated on a reservation(s) must comply with the requirements of applicable rules, resolutions and ordinances enacted by the governing body of the tribe.

§ 101.6 Modification of loans.

(a) *United States direct loans.* Any modification of the terms and provisions of a United States direct loan agreement must be requested in writing by the borrower and approved by the Commissioner. The borrower will submit the request for modification and will indicate the section(s) of the loan agreement to be modified together with a justification for the modification. Requests for modifications of loan agreements will include an agreement to abide by the provisions of the regulations in this part and future amendments and modifications thereof. In addition, a current credit bureau report, obtained by the Bureau of Indian Affairs, will be made a part of the modification request.

(b) *Relending program.* Any modification of the terms and provisions of a loan agreement of a borrower from an organization conducting a relending program must be in writing, agreed to by the borrower, and must be approved by the body authorized to act on loans and modifications thereof as provided in an approved declaration of policy and plan of operation or other plan. If a request for modification of a loan has been disapproved by the body authorized to act on the request, the rejected borrower may request the Commissioner to make a direct loan from the revolving loan fund if the Commissioner determines that the rejection is unwarranted.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46472, Oct. 8, 1992]

§ 101.7 Management and technical assistance.

Prior to and concurrent with the approval of a United States direct loan to finance an economic enterprise, the Commissioner will assure under title V of the Indian Financing Act of 1974 that competent management and technical assistance is available to the loan applicant for preparation of the application and/or administration of funds loaned consistent with the nature of the enterprise proposed to be or in fact funded by the loan. Assistance may be provided by available Bureau of Indian Affairs staff, the tribe or other sources which the Commissioner considers competent to provide needed assistance. Contracting for management and technical assistance may be used only when adequate assistance is not available without additional cost. Contracts for providing borrowers with competent management and technical assistance shall be in accordance with applicable Federal Procurement Regulations and the Buy Indian Act of April 30, 1908, chapter 153 (35 Stat. 71), as

amended June 25, 1910, chapter 431, section 25 (36 Stat. 861).

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34975, Aug. 23, 1989]

§ 101.8 Environmental and Flood Disaster Acts.

Loans will not be approved until there is assurance of compliance with any applicable provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234, 87 Stat. 975), the National Environmental Policy Act of 1969 (Pub. L. 91–190), (42 U.S.C. 4321) and Executive Order 11514.

§ 101.9 Preservation of historical and archeological data.

(a) On United States direct loans from the revolving loan fund and modifications thereof to provide additional loan funds which will involve excavations, road or street construction, land development or disturbance of land on known or reported historical or archeological sites, the Commissioner will take or require appropriate action to assure compliance with the applicable provisions of the Act of June 27, 1960 (74 Stat. 220; (16 U.S.C. 469)), as amended by the Act of May 24, 1974 (Pub. L. 93–291, 88 Stat. 174).

(b) On loans made by relending organizations conducting a relending program using revolving loan funds, the body authorized to act on loan applications and modifications thereof will, at the time of taking action on a loan or request for modification, inform the applicant of the applicability of this Act to the loan and advise the Commissioner of compliance or the need to obtain compliance.

§ 101.10 Federal Reserve Regulation Z and Fair Credit Reporting Act.

(a) United States direct loans and loans made by a relending organization are subject to the provisions of Federal Reserve Regulation Z (Truth In Lending, 12 CFR Part 226; Pub. L. 91–508, 84 Stat. 1127). Economic enterprises which extend credit and require payment of finance charges on unpaid balances will determine the applicability of Regulation Z and comply with the requirements thereof. The Commissioner will issue any necessary instructions to assure compliance with Regulation Z on United States direct loans.

(b) Relending organizations, through their committee or other body authorized to act on loan matters on its behalf, will assure compliance with the applicable provisions of this Act.

(c) The Commissioner will require adherence to the provisions and requirements of title VI of the Fair Credit Reporting Act in making United States direct loans. Relending organizations, through the body authorized to act on credit matters, will require compliance with the requirements of the Fair Credit Reporting Act.

§ 101.11 Interest.

(a) The interest to be charged on loans by the United States shall be at a rate determined by the Secretary of the Treasury in accordance with section 104, title I, of the Indian Financing Act of 1974 (Pub. L. 93-262, 88 Stat. 77). The interest rate shall be determined monthly and shall be effective on advances made on loans during the current calendar month. The interest rate shall be stated in the promissory note(s) executed by the borrower(s) evidencing the advance(s).

(b) Additional charges to cover loan administration costs, including credit reports, may be charged to borrowers.

(c) Education loans may provide for deferral of interest while the borrower is in school full time or in the military service.

(d) The interest rate on loans made by relending organizations which are conducting relending programs shall not be less than the rate the organization pays on its loan(s) from the United States. Relending organizations which adopt and follow the same procedure in calculating interest on educational loans as is followed on educational loans made by the United States, will not be charged interest on loans from the United States on the amount outstanding on educational loans during the period the organization is not charging its borrowers interest.

(e) Interest rates on loan advances made by the United States as shown on promissory notes dated before April 12, 1974, will remain in effect until the loan is paid in full, refinanced, or modified to extend the repayment

terms. Unless otherwise specifically provided in a loan contract, the interest rate on advances made after April 12, 1974, will be at a rate determined pursuant to section 104 of Title I of the Indian Financing Act of 1974. The interest rate on loans for expert assistance will be at a rate established in § 101.25 herein.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46472, Oct. 8, 1992]

§ 101.12 Records and reports.

Loan agreements between the United States and tribes, corporations, partnerships, cooperative associations and individual Indians for financing economic enterprises, and to relending organizations, will require that borrowers establish and maintain accounting and operating records that are satisfactory to the Commissioner and submit written reports as required by the Commissioner. The records, accounts, and loan files shall be available for examination and audit by the Commissioner at any reasonable time. Unless an exception is approved by the Commissioner, borrowers will be required to have an annual audit made of the records of relending programs and economic enterprises financed with revolving loan funds, by a certified public accountant or a firm of certified public accountants or other qualified public accountants satisfactory to the Commissioner.

§ 101.13 Security.

(a) United States direct loans shall be secured by such security as the Commissioner may require. A lack of security will not preclude the making of a loan if the proposed use of the funds is sound and the information in the application and supporting papers correctly show that expected income will be adequate to pay all expenses and the loan principal and interest payments, indicating reasonable assurance that the loan will be repaid. Loans made by relending organizations conducting a relending program using revolving loan funds will require borrowers to give security for loans, if available, but the absence of security will not preclude the making of a loan if the proposed use of the funds is sound and the information in the application and supporting papers correctly show that expected income will be adequate to pay all expenses and the loan principal and interest payments, indicating reasonable assurance that the loan will be repaid. The declaration of policy and plan of operation of relending organizations conducting relending programs will include provisions covering the type and amount of security to be taken to secure loans made.

(b) Land purchased by an individual Indian with the proceeds of a loan and land already held in trust or restricted status by the individual Indian may be mortgaged as security for a loan in accordance with 25 CFR 152.34 and the Act of March 29, 1956 (70 Stat. 62; (25 U.S.C. 483a)). Mortgages of individually held trust or restricted land will include only an acreage of the borrower's land which the Commissioner determines is necessary to protect the loan in case of default. On proposed foreclosures which involve the sale of individually held trust or restricted land given as security for a loan, the tribe of the reservation on which the land is located will be notified in writing at least thirty calendar days in advance of the anticipated date of sale. Land purchased by a tribe with the proceeds of a loan from the revolving loan fund with title taken in a trust or restricted status, and land already held in a trust or restricted status by a tribe may not be mortgaged as security for a loan.

(1) Title to any land purchased by a tribe or by an individual Indian with revolving loan funds may be taken in trust or restricted status unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or an individual Indian which is outside the boundaries of a reservation or approved consolidation area may be taken in trust if the purchaser was the owner of trust or restricted interests in the land before the purchase. Otherwise, title shall be taken in the name of the purchaser without any restrictions on alienation, control, or use.

(c) Mortgages of leasehold interests in land held in trust or restricted status by an individual Indian, may be

taken for the purpose of borrowing capital for the development and improvement of the leased premises when permitted in the lease or lease modification agreement. Such mortgages must be approved by the lessor and Commissioner. (70 Stat. 62, (25 U.S.C. 483a)).

(d) Individuals may give assignments of income from trust property as security for loans. Tribes may give assignments of trust income as security for loans provided that the assignment shall be specific as to the source(s) of income being assigned. All assignments of trust income require approval by the Commissioner before becoming effective.

(e) Chattels may be given as security for a loan. A mortgage on chattels, the title to which is known to be in trust, requires Commissioner approval. Non-trust chattels may be mortgaged without approval of any federal official.

(f) Crops grown on lands held in trust or restricted status for the benefit of an individual Indian may be given as security for a loan when approved by the Commissioner. Crops grown on leased, trust or restricted land may be given as security for a loan when permitted by the provisions of a lease or when the owner gives written consent. Approval of the lien document by the Commissioner is required. Crops grown on trust or restricted land held by a tribe which has been assigned to an individual for use may be given as security for a loan, provided the terms of the assignment permit the assignee to give the crops as secuirty for a loan or the tribe's governing body specifically gives consent. The lien document requires Commissioner approval. Crops grown on non-trust or non-restricted land may be mortgaged without the approval of any federal official.

(g) Title to any personal property purchased with a loan shall be taken in the name of the purchaser and mortgaged to secure the loan unless the loan is otherwise adequately secured. Tribes must adhere to the provisions of their constitutions and bylaws, corporate charters, or other organizational documents when mortgaging tribal property and assigning trust income as security for loans.

(h) Relending organizations receiving a loan from the United States for relending shall be required to assign to the United States as security for the loan all securities acquired in connection with loans made to its members, sub-organizations, or associations from such funds, unless the Commissioner determines that repayment of the loan to the United States is otherwise reasonably assured. Funds advanced to finance a tribal economic enterprise shall be secured by an assignment of net income and net assets of the economic enterprise, unless the Commissioner determines that it is not feasible to require an assignment or that repayment of the loan to the United States is otherwise reasonably assured.

(i) Securing documents or financing statements shall be filed or recorded in accordance with applicable state or federal laws except for those customarily filed in Bureau of Indian Affairs offices. Mortgages on documented vessels will be filed at the customs house designated as the home port of the vessel as shown on the marine document.

§ 101.14 Maturity.

The maturity of any United States direct loan shall not exceed thiry years. Loans made will be scheduled for repayment at the earliest possible date consistent with the purpose of the loan and the repayment capacity of the borrower.

§ 101.15 Penalties on default.

Unless otherwise provided in the loan agreement between the United States and a borrower, failure on the part of a borrower to conform to the terms of the loan agreement will be deemed grounds for the taking of any one or all of the following steps by the Commissioner:

(a) Discontinue any further advance of funds contemplated by the loan agreement.

(b) Take possession of any or all collateral given as security and in the case of individuals, corporation, partnerships or cooperative associations, the property purchased with the borrowed funds.

(c) Prosecute legal action against the borrower or against officers of corporations, tribes, bands, credit associations, cooperative associations, and other organizations.

(d) Declare the entire amount advanced immediately due and payable.

(e) Prevent further disbursement of credit funds under the control of the borrower.

(f) Withdraw any unobligated funds from the borrower.

(g) Require relending organizations conducting a relending program to apply all collections on loans to liquidate the debt to the United States.

(h) Take possession of the assets of a relending organization conducting a relending program and exercise or arrange to exercise its powers until the Commissioner has received acceptable assurance of its repayment of the revolving loan and compliance with the provisions of the terms of the loan agreement.

(i) Liquidate, operate or arrange for the operation of economic enterprises financed with revolving loans made to individuals, tribes, corporations, partnerships and cooperative associations until the indebtedness is paid or until the Commissioner has received acceptable assurance of its repayment and compliance with the terms of the loan agreement.

(j) Report the name and account information of a delinquent borrower to a credit bureau.

(k) Assess additional interest and penalty charges for the period of time that payment is not made.

(l) Assess charges to cover additional administrative costs incurred by the Government to service the account.

(m) Offset amounts owed the borrower under other Federal programs including other programs administered by the Bureau of Indian Affairs.

(n) Refer the account to a private collection agency to collect the amount due.

(o) Refer the account to the U.S. Department of Justice for collection by litigation.

(p) If the borrower is a current or retired Federal employee, take action to offset the borrower's salary or civil service retirement benefits.

(q) Refer the debt to the Internal Revenue Service for offset against any amount owed the borrower as an income tax refund.

(r) Report any written-off debt to the Internal Revenue Service as taxable income to the borrower.

(s) Recommend suspension or debarment from conducting further business with the Federal Government.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46472, Oct. 8, 1992]

§ 101.16 Default on loans made by relending organizations.

Relending organizations conducting relending programs using revolving loan funds will follow prudent lending practices in making and servicing loans and take appropriate actions to protect their interests in the security given to secure repayment of loans. Declarations of policy and plans of operation shall include procedures which will be followed in acting to correct a default, such as modification of loan agreement or foreclosure and liquidation of security. Relending organizations employing a general counsel will refer legal questions on foreclosure procedures and sale of security to their counsel.

§ 101.17 Uncollectable loans made by the United States.

If the Secretary determines that a United States direct loan is uncollectable in whole or in part or is collectable only at an unreasonable cost, or when such action would be in the best interest of the United States, the Secretary may cancel, adjust, compromise, or reduce the amount of any loan made from the revolving loan fund. The Commissioner may adjust, compromise, subordinate, or modify the terms of any mortgage, lease, assignment, contract, agreement, or other document taken as security for loans. The cancellation of all or part of a loan shall become effective when signed by the Secretary.

[54 FR 34975, Aug. 23, 1989]

§ 101.18 Uncollectible loans made by relending organizations.

(a) Relending organizations conducting relending programs using revolving loan funds may, when approved by the Commissioner, chargeoff as uncollectible all or part of the balance

of principal and interest owing on loans which are considered to be uncollectible. Usually a chargeoff includes both principal and interest and provides for cessation of interest accruals on the principal balance owing as of the date of the chargeoff.

(b) Action to chargeoff a loan will be in the form of a resolution enacted by the committee or body authorized and responsible for actions on loan matters for the relending organization. Before action is taken to chargeoff a loan as uncollectible, the lender will make an effort, to the extent feasible, to liquidate the security given for a loan and apply the net proceeds as a repayment on the balance of principal and interest owed. The chargeoff of a loan by a relending organization as uncollectible will not reduce the principal balance owed to the United States. A chargeoff will not release the borrower of the obligation or the responsibility to make payments when his or her financial situation will permit. Chargeoff action will not release the lender of responsibility to continue its efforts to collect the loan.

§ 101.19 Assignment of loans.

A borrower of a direct loan from the United States may not assign the loan agreement or any interest in it to a third party without the consent of the Commissioner. Relending organizations which are conducting relending programs may not assign the loan agreements of borrowers, or any interest therein, to third parties without the approval of the Commissioner and the borrower.

§ 101.20 Relending by borrower.

(a) A relending organization may reloan funds loaned to it by the United States with the approval of the Commissioner. The Commissioner may authorize such lenders to approve applications for particular types of loans up to a specified amount.

(b) Loans shall be secured by such securities as the lender and the Commissioner may require. With the Commissioner's approval, mortgages of individually held trust or restricted land, leasehold interests, chattels, crops grown on trust or restricted land, and assignments of trust income may all be taken as security for loans.

(c) Title to personal property purchased with loans received from relending organizations using revolving loan funds in its relending program shall be taken in the name of the borrower.

(d) The term of a loan made by a relending organization conducting a relending program shall not extend beyond the maturity date of its loan from the United States, unless an exception is approved by the Commissioner and the organization has funds available from which to make scheduled repayment on its loan from the United States. Loans made will be scheduled for repayment at the earliest possible date consistent with the purpose for which a loan is made and the indicated repayment capacity of the borrower.

(e) Securing documents or financing statements shall be filed or recorded in accordance with federal or state law except those customarily filed in Bureau of Indian Affairs offices. Mortgages on documented vessels will be filed at the custom house designated as the home port of the vessel as shown on the marine document.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982. Further redesignated and amended at 57 FR 46472, Oct. 8, 1992]

§ 101.21 Repayments on United States direct loans.

Repayments on United States direct loans shall be made to the authorized collection officer of the Bureau of Indian Affairs who shall issue an official receipt for the repayment and deposit the collection into the revolving loan fund. Collections will first be applied to pay interest to date of payment and the balance applied on the principal installment due. Collections on loans made by relending organizations which have been declared in default in which the Commissioner has taken control of the assets of the program (including loans made with balances owing) will be made to an authorized collection officer of the Bureau of Indian Affairs who shall issue a receipt to the payor and deposit the collection in the United States revolving loan fund. The relending organization's loan from the United States will be credited with the amounts collected from its borrowers,

with the collections applied first on interest accrued and the balance applied to the principal. Payments on United States direct loans may be made in advance of due dates without penalty.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982. Further redesignated at 57 FR 46472, Oct. 8, 1992]

§ 101.22 Repayments on loans made by relending organizations.

Repayments on loans made by a relending organization conducting a relending program will be made to the officers of the lending organization or individuals designated and authorized in a declaration of policy and plan of operation. Collections on loans and other income to a relending program will be deposited in the lender's revolving loan account as designated in a declaration of policy and plan of operation. Collections on loans will be first applied to pay interest to date of payment with the balance applied to the principal.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982. Further redesignated at 57 FR 46472, Oct. 8, 1992]

§ 101.23 Approval of articles of association and bylaws.

Articles of association and bylaws of relending organizations and cooperative associations require approval of the Commissioner if they make application for a revolving credit loan.

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982. Further redesignated at 57 FR 46472, Oct. 8, 1992]

§ 101.24 Loans for expert assistance for preparation and trial of Indian claims.

(a) Loans may be made to Indian tribes, bands and other identifiable groups of Indians from funds authorized and appropriated under the provisions of section 1 of the Act of November 4, 1963 (Pub. L. 88–168, 77 Stat. 301; 25 U.S.C. 70n–1), as amended by the Act of September 19, 1966 (Pub. L. 89–592, 80 Stat. 814) and section 2 of the Act of May 24, 1973 (Pub. L. 93–37, 87 Stat. 73). Loan proceeds may only be used for the employment of expert assistance, other than the assistance of counsel, for the preparation and trial of claims pending before the Indian Claims Commission. Applications for loans will be submitted on forms approved by the Commissioner and shall include a justification of the need for a loan. The justification shall include a statement from the applicant's claims attorney regarding the need for a loan. The application will be accompanied by a statement signed by an authorized officer of the applicant certifying that the applicant does not have adequate funds available to obtain and pay for the expert assistance needed. The Superintendent and the Area Director will attest to the accuracy of the statement or point out any inaccuracies. Loans will be approved by issuance of a commitment order by the Commissioner.

(b) No loan shall be approved if the applicant has funds available on deposit in the United States Treasury or elsewhere in an amount adequate to obtain the expert assistance needed or if, in the opinion of the Commissioner, the fees to be paid the experts are unreasonable on the basis of the services to be performed by them.

(c) Contracts for the employment of experts are subject to the provisions of 25 U.S.C. 81 and require approval by the Commissioner.

(d) Vouchers or claims submitted by experts for payment for services rendered and reimbursement for expenses will be in accordance with the provisions of the expert assistance contract and shall be sufficiently detailed and itemized to permit an audit to determine that the amounts are in accordance with the contract. Vouchers or claims shall be reviewed by the borrower's claims attorney who will certify on the last page of the voucher or by attachment thereto, that the services have been rendered and payment is due the expert and that expenses and charges for work performed are in accordance with the provisions of the contract.

(e) Requests for advances under the loan agreement shall be accompanied by a certificate signed by an authorized officer of the borrower certifying that the borrower does not have adequate funds available from its own financial resources with which to pay the expert. The Superintendent and Area Director will attest to the accuracy of the statement or point out inaccuracies. A copy of the voucher or claim from the expert

will accompany the request for advance.

(f) Loan funds will be advanced only as needed to pay obligations incurred under approved contracts for expert assistance. The funds will be deposited in a separate account, shall not be commingled with other funds of the borrower, and shall not be disbursed for any other purpose.

(g) Loans shall bear interest at the rate of 5½ percent per annum from the date funds are advanced until the loan is repaid.

(h) The principal amount of the loan advanced plus interest shall be repayable from the proceeds of any judgment received by the borrower at the time funds from the award become available to make the payment.

(77 Stat. 301 (25 U.S.C. 70n–1 to 70n–7))

[40 FR 3587, Jan. 23, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982. Further redesignated at 57 FR 46472, Oct. 8, 1992]

§ 101.25 Information collection.

(a) The collections of information contained in §§ 101.3, 101.4, 101.12, and 101.25 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0020. The information will be used to rate applicants in accordance with the terms and conditions set forth in section 103 of the Indian Financing Act, as amended. Response is required to obtain a benefit in accordance with 25 U.S.C. 1451.

(b) Public reporting burden for this information is estimated to vary from 15 minutes to 3 hours per response, with an average of one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337–SIB, 18th and C Streets NW., Washington, DC 20240; and the Paperwork Reduction Project (1076–0020), Office of Management and Budget, Washington, DC 20503.

[54 FR 34975, Aug. 23, 1989. Redesignated at 57 FR 46472, Oct. 8, 1992]

PART 103—LOAN GUARANTY, INSURANCE, AND INTEREST SUBSIDY

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AUTHORITY: 25 U.S.C. 1498.

SOURCE: 40 FR 12492, Mar. 19, 1975, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§103.1 Definitions.

As used in this part:

Applicant means one who applies for a guaranteed or insured loan.

Borrower means the Indian organization or individual Indian receiving a guaranteed or insured loan.

Commissioner means the Commissioner of Indian Affairs or his authorized representative.

Cooperative Association means an association of individuals organized pursuant to state, Federal, or tribal law for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized as a corporation pursuant to state, Federal, or tribal law, with or without stock for the purpose of owning and operating an economic enterprise.

Default means failure of a borrower to:

(1) Make scheduled payments on a loan when due,

(2) Obtain the lender's approval for disposal of assets mortgaged as security for a loan, or

(3) Comply with the covenants, obligations, or other provisions of a loan agreement.

Economic enterprise means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

Equity means the borrower's residual ownership, after deducting all business debt, of tangible business assets used in the business being financed, on which a lender can perfect a first lien position.

Financing statement means the document filed or recorded in county or state offices pursuant to the provisions of the Uniform Commercial Code notifying third parties that a lender has a lien on the chattels and/or crops of a borrower.

Guaranty means the obligation assumed by the United States to repay a specific percentage of a loan upon default of the borrower pursuant to the regulations in this part.

Indian means a person who is a member of an Indian tribe as defined in this part.

Insured loan means a loan made pursuant to an agreement approved by the Commissioner with a financial institution, under which an obligation is assumed by the United States to indemnify the lender for a percentage of the loss on loans, pursuant to the regulations in this part.

Interest subsidy means payments which may be made by the United States to lenders making guaranteed or insured loans to reduce the interest rate which borrowers pay the lenders to the rate established pursuant to section 104 of the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.).

Mortgage means a mortgage or deed of trust evidencing an encumbrance of land, a mortgage or security agreement executed as evidence of a lien against crops and chattels, and a mortgage or deed of trust evidencing a lien on leasehold interests.

Organization means the governing body of any Indian tribe or entity established or recognized by such governing body for the purpose of the Indian Financing Act.

Partnership means a form of business organization in which two or more persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain organized under tribal, state, or Federal law.

Premium means the charges paid by lenders for the guaranty or insurance of loans under provisions for reimbursement of lenders by the United States for a percentage of losses incurred.

Reservation means Indian reservation, California rancheria, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by Alaska Native groups incorporated

under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Secretary means the Secretary of the Interior.

Tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or any regional, village, or urban or group corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) as amended which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

[57 FR 46472, Oct. 8, 1992]

§ 103.2 Purpose.

(a) The purpose of this part 103 is to prescribe the terms, conditions and provisions under which loans made to eligible tribes, Indian organizations and individual Indians for financing economic enterprises which contribute beneficially to the economy of an Indian reservation or for housing on a reservation may be guaranteed or insured by the United States. Lenders are reimbursed for a percentage of a loss or losses incurred on loans made under the provisions of this part 103, as evidenced by an approved guaranty certificate or insurance agreement.

(b) It is also the purpose of this part 103 to prescribe procedures for payment of an interest subsidy to lenders making guaranteed or insured loans to reduce the interest to be paid by the borrowers, for establishing loan guaranty and insurance premiums to be charged, and for collection of the premium. This program will provide Indians with additional sources of financing needed to develop and manage their reservation resources to a higher degree.

§ 103.3 Kinds of loans.

(a) Loans to tribes, eligible Indian organizations, and Indian individuals for financing economic enterprises which contribute to the economy of a reservation or its members or for housing on a reservation to be occupied by the borrower may be guaranteed or insured. Housing loans may be guaranteed or insured only after a determination has been made by the Commissioner that other sources of financing are not available to the applicant on reasonable terms and conditions.

(b) Loans to tribes and organizations for the purchase of land may be guaranteed or insured only for purchasing land within the exterior boundaries of a reservation or land outside the exterior boundaries of a reservation which will be used by the borrower and/or its members for an economic enterprise which will contribute to the economy of a reservation. Loans to individuals may be guaranteed or insured for purchasing trust or restricted land in which the borrower owns an interest or land within the exterior or outside the exterior boundaries of a reservation. In all instances, the land must be used by the borrower in operating an economic enterprise which will contribute to the economy of a reservation. The Commissioner may require an applicant for a guaranteed or insured loan for the purchase of land to provide information showing that financing from other sources is not available on reasonable terms and conditions. Title to land purchased with a guaranteed or insured loan may be taken in trust or restricted status unless the land is located outside the boundaries of a reservation or a tribal consolidation area approved by the Secretary. Title to any land purchased by a tribe or an individual Indian which is outside the boundaries of a reservation or approved consolidation area may be taken in trust if the purchaser was the owner of a trust or restricted interest in the land before the purchase. Otherwise, title shall be taken in the name of the purchaser without any restrictions on alienation, control or use.

(c) Funds included in loans for the purchase of non-recoverable items, as well as furniture, passenger carrying automobiles, trucks or pickups, televisions, radios, and household appliances are not eligible for guaranty or insurance unless required in the direct operation of an economic enterprise. Funds included in loans for payment of personal bills or obligations are not eligible for guaranty or insurance. Funds included in loans for payment of unsecured debts may be guaranteed or insured only if justified, due to the applicant's financial position and clearly to

the advantage of the applicant in the operation of an economic enterprise.

(d) No loans will be guaranteed or insured for the financing of a relending program.

§103.4 Management and technical assistance.

(a) Prior to and concurrent with the issuance of a guaranty certificate for a loan to finance an economic enterprise, the Commissioner will assure under title V of the Indian Financing Act that competent management and technical assistance are available for preparation of the application and/or administration of funds granted consistent with the nature of the enterprise proposed to be or that is in fact funded. Assistance may be provided by available Bureau of Indian Affairs staff, other government agencies including states, a tribe, or other sources which the Commissioner considers competent to provide the needed assistance. Contracting for management and technical assistance may be used only when adequate assistance is not available without additional cost. Contracts for providing borrowers with competent management and technical assistance shall be in accordance with applicable Federal Procurement Regulations, and the Buy Indian Act of April 30, 1908, Chapter 431, section 25 (36 Stat. 861).

(b) When submitting to the Commissioner a request for guaranty or insurance of a loan to finance an economic enterprise, a lender will include, as part of the request, or separately, its evaluation of the applicant's need for management and technical assistance, specific areas of need, and whether the lender will provide such assistance to the applicant. A lender making loans under the provisions of a general insurance agreement may determine each applicant's need for management and technical assistance when financing of an economic enterprise is involved. If a lender determines that an applicant will need management and technical assistance, it will notify the Commissioner in writing indicating the specific areas of need, and whether it will provide such assistance.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34975, Aug. 23, 1989]

§103.5 Preservation of historical and archeological data.

Lenders making guaranteed or insured loans to finance activities involving excavations, road construction, and land development or involving the disturbance of land on known or reported historical or archeological sites will take appropriate action to assure compliance with applicable provisions of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469), as amended by the Act of May 24, 1974 (Pub. L. 93–291, 88 Stat. 174), relating to the preservation of historical and archeological data. Lenders receiving applications for loans which include funds for purposes which may involve compliance with the provisions of the Act of June 27, 1960, as amended, may request assistance and guidance from the Commissioner in assuring compliance with the requirements of the Act.

§103.6 Environmental and flood disaster protection.

Applications for loans to purchase or construct buildings or other improvements which require compliance with any provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234, 87 Stat. 975), and provisions of the National Environmental Policy Act of 1969 (Pub. L. 91–190; 42 U.S.C. 4321) and Executive Order 11514 will not be approved until the lender has received assurance of compliance with any applicable provisions of these Acts. Lenders receiving applications which include funds for purposes which may involve compliance with the provisions of one or both of these Acts may request assistance and guidance from the Commissioner in assuring compliance.

§103.7 Eligible organizations.

Tribes and Indian organizations having a form of organization satisfactory to the Commissioner recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs, and indicating reasonable assurance of repayment, are eligible for guaranteed or insured loans. If Indian ownership of an economic enterprise falls below 51 percent, the borrower shall be in default and the guaranty shall cease and the interest subsidy

shall be discontinued. Cooperative associations, corporations and partnerships shall be organized pursuant to state, federal or tribal law. Cooperative associations, corporations, and partnerships applying for a guaranteed or insured loan to purchase, establish or operate an economic enterprise on a reservation must comply with the requirements of applicable rules, resolutions, or ordinances enacted by the governing body of the tribe, if applicable.

[40 FR 12492, Mar. 19, 1975; 40 FR 20952, May 15, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

§ 103.8 Eligible individuals.

Indians who are members of tribes recognized by the federal government as eligible for services from the Bureau of Indian Affairs are eligible for guaranteed or insured loans. Individuals applying for a guaranteed or insured loan to purchase, establish or operate an economic enterprise on a reservation must comply with the requirements of applicable rules, resolutions or ordinances enacted by the governing body of the tribe.

[54 FR 34975, Aug. 23, 1989]

§ 103.9 Eligible lenders.

(a) Those financial institutions subject to examination and supervision by an agency of the United States, a state, or the District of Columbia, having the capacity to evaluate, process, disburse, and service loans, and Indian tribes making loans from their own funds to other tribes or organizations of Indians, are eligible to have loans insured under this part 103. Loans made by any lender regularly engaged in making loans, having the capacity to accept and process applications and service loans, and which lender is satisfactory to the Commissioner, may be guaranteed. Any national bank or federal savings and loan association, or any bank, trust company, building and loan association, or insurance company authorized to do business in the District of Columbia may make any loan of which at least 20 percent is guaranteed under this part 103 without regard to the limitations and restrictions of any other federal statute with respect to:

(1) Ratio of amount of loan to the value of the property;

(2) Maturity of loans,

(3) Requirement of mortgage or other security,

(4) Priority of lien, or

(5) Percentage of assets which may be invested in real estate loans.

(b) Any guaranty certificate issued pursuant to this part 103 or any loan insured pursuant to an agreement with a lender approved in accordance with this part 103 shall be conclusive evidence that the loan was eligible for guaranty or insurance.

§ 103.10 Ineligible loans.

The following loans are not eligible for guaranty or insurance under this part 103:

(a) Loans made by any agency or instrumentality of the federal government.

(b) Loans made by an organization of Indians making loans from funds borrowed from the United States.

(c) Loans where the interest income is not included as taxable income under Chapter 1 of the Internal Revenue Code of 1954 as amended.

(d) Loans with repayment terms exceeding thirty years.

(e) Loans which are linked to Federally tax-exempt bond obligations.

(f) Loans to a borrower whose equity, as defined in § 103.1, in the business being financed is less than 20 percent.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

§ 103.11 Guaranteed loans.

Loans, except those excluded in § 103.10, made by any lender meeting the requirements of § 103.9(a), which are satisfactory to the Commissioner may be guaranteed. Applications for guaranty will be considered on a loan by loan basis. No guaranty shall be effective until issuance of a guaranty certificate by the Commissioner and receipt of the guaranty premium from the lender. A guaranty certificate shall be issued only when, in the judgment of the Commissioner, there is a reasonable prospect of repayment of the loan.

§ 103.12 Insured loans.

(a) Eligible lenders, as prescribed in § 103.9, and tribes making loans from their own funds to other tribes or Indian organizations, may make insured loans, except those excluded in § 103.10 pursuant to the provisions of an insurance agreement entered into between the Commissioner and the lender. Insurance agreements may be entered into by the Commissioner and eligible lenders which will authorize the lenders to make insured loans to eligible applicants without the Commissioner's approval of each individual loan. Separate insurance agreements will be issued by the Commissioner for those loans which require the issuance of individual insurance agreements.

(b) Lenders will make loans only when there is a reasonable prospect of repayment. The insurance on any loan made under the provisions of an insurance agreement will not be effective until receipt of the insurance premium by the Commissioner.

§ 103.13 Amount of guaranty.

(a) The percentage of a loan that is guaranteed shall be the minimum necessary to obtain financing for an applicant, but may not exceed 90 percent of the unpaid principal and interest. The liability under the guaranty shall increase or decrease pro rata with an increase or decrease in the unpaid portion of the principal amount of the obligation. No loan to an individual Indian, partnership, or other non-tribal organization may be guaranteed for an unpaid principal amount in excess of $500,000 or such maximum amount provided in any amendments to the Indian Financing Act of 1974.

(b) Applications of minors as determined by applicable state and federal law, may not be approved unless the natural parents or legal guardians, with reputations as being responsible individuals, co-sign the promissory note(s) and securing document(s). Not more than one guaranteed loan may be in effect with the same borrower at any time without the prior approval of the Commissioner.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34975, Aug. 23, 1989; 57 FR 46473, Oct. 8, 1992]

§ 103.14 Amount of insurance.

(a) The insurance provisions will apply to loans made by a particular lender under the terms of an insurance agreement entered into between the Commissioner and the lender. The insurance procedure will be used primarily for loans to finance small economic enterprises and secondarily for housing. A lender may be reimbursed for a loss on a particular loan in an amount not to exceed 90 percent of the loss on principal and unpaid accrued interest on the loan. However, the total reimbursement to a lender for losses may not exceed 15 percent of the aggregate of insured loans made by it.

(b) Loans for any amount made by tribes from their own funds to other tribes or Indian organizations will not be insured without the prior approval of the Commissioner. No loan to finance an economic enterprise with a principal amount in excess of $50,000 shall be insured without the prior approval of the Commissioner. No loan to an individual Indian may be insured which would cause the total unpaid principal amount to exceed $100,000. Any loan to an individual Indian having a principal amount in excess of $50,000 will require prior approval of the Commissioner. No loan to an individual with a principal amount of less than $2,500 or for a term of less than one year may be insured. No loan to a tribe or Indian organization for a principal amount of less than $10,000 for a term of less than one year may be insured. An exception may be made to these limitations on amounts and time, if approved by the Commissioner.

(c) Applications of minors may not be approved unless the natural parents or legal guardians, with reputations as being responsible individuals, co-sign the promissory note(s) and securing documents. Not more than one insured loan may be in effect with the same borrower at any time without the prior approval of the Commissioner.

§ 103.15 Applications for loan guaranties or insurance.

(a) Applicants for loans will deal directly with lenders for both guaranteed and insured loans. The form of loan applications will be determined by the

lender. The application for a loan guaranty or insurance, or attachments thereto, must include or show the following:

(1) The name and address of the borrower with the tax identification number if the borrower is a business entity or the social security number if an individual;

(2) A statement signed by the borrower that the borrower is not delinquent with any Federal tax or other obligations;

(3) The plan of operation for the economic enterprise including an identified target market for the goods or services being offered;

(4) Purpose(s) and the amount of the loan;

(5) Security to be given which shall be itemized with valuations of such collateral and the method used to value the collateral, the date of such valuation, who performed the valuation, and the creditor priority positions;

(6) Hazard and liability insurance to be carried;

(7) Interest rate;

(8) Repayment schedule;

(9) Repayment source(s);

(10) How title to the property to be purchased with the loan will be taken;

(11) Current financial statements of the loan applicant;

(12) Description and dollar value of the equity or personal investment to be made by the applicant;

(13) Charges pursuant to § 103.44;

(14) Pro forma balance sheets, operating statements and cash flow statements for at least three years;

(15) Balance sheets and operating statements for the two preceding years, or applicable period thereof if already in operation;

(16) The lender's evaluation of the economic feasibility of the enterprise and internal credit memorandum; and

(17) A current credit bureau report on the borrower.

Applications will also show the percentage of guaranty requested.

(b) Reasonable assurance of repayment will be considered to exist:

(1) In the case of individuals, where past operations and future prospects of the applicant's operations demonstrate ability to repay the loan from production, earnings, or other assets. Full consideration will be given to the applicant's managerial ability and experience.

(2) In the case of tribes and Indian organizations, where past operations or future plans of operations indicate that the economic enterprise for which financing is requested is economically sound. Full consideration will be given to arrangements for efficient management of the economic enterprise for which financing is requested.

(c) The Commissioner may review applications for guaranteed loans individually and independently from the lending institution.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34975, Aug. 23, 1989; 57 FR 46473, Oct. 8, 1992]

§ 103.16 Loan otherwise available.

If the information in an application for a guaranteed or insured loan indicates that the applicant may obtain the loan without a guaranty or insurance, the Commissioner may deny the request for a guaranty or insurance.

[57 FR 46473, Oct. 8, 1992]

§ 103.17 Refinancing.

(a) Applications for loans to refinance indebtedness will be approved only if justified and required due to the applicant's financial position and if clearly to the advantage of the applicant. Applications to refinance loans to an economic enterprise will be accompanied by financial and cash flow statements required in § 103.15(a) (1) through (17). A guaranty of a loan to refinance existing indebtedness will be considered only if the loan will result in a significantly lower lender's interest rate to the borrower, or provide a substantially longer term for repayment of the loan, or decrease the loan-to-asset value ratio of the business being financed.

(b) Applications for refinancing loans not guaranteed or insured under this part 103 will not be approved for guaranty or insurance if, in the opinion of the Commissioner, the submittal of the application is motivated primarily to

obtain guaranty or insurance of a loan which otherwise would be made.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

§ 103.18 Furnishing additional information.

The Commissioner may require either the lender or the borrower, or both, to furnish additional information or justification for a loan prior to issuance of a guaranty certificate or insurance agreement where Commissioner approval of an individual insured loan is required.

§ 103.19 Approval of guaranteed loans.

(a) Upon a lender's approval of an application for a guaranteed loan, the lender will forward the application in duplicate to the Commissioner with a ''Request for Guaranty''. The Commissioner will approve the application by issuance of a ''Guaranty Certificate'' which will show the percentage amount of the loan guaranteed, the premium to be paid to the Commissioner and the interest subsidy to be paid on the loan by the United States.

(b) If the application is not approved, the original will be returned to the lender with an explanation, and a copy furnished the loan applicant.

§ 103.20 Approval of insured loans.

After a lender approves a loan eligible for insurance in accordance with an approved insurance agreement, the lender will proceed as authorized by the agreement. Applications for insured loans which require approval by the Commissioner as prescribed in § 103.14 will be forwarded in duplicate to the Commissioner with a ''Request for Insurance'' signed by the lender. The Commissioner will approve the application by issuance of an ''Insurance Agreement''. If the application is not approved, the original will be returned to the lender with an explanation.

§ 103.21 Modification of loan agreements.

(a) Guaranteed and insured loans may be modified with the approval of the parties to the original loan agreement. Modification of guaranteed loans and those insured loans which required Commissioner approval, requires the Commissioner's approval only if the modification involves:

(1) Change of the repayment schedules,

(2) Changes in the prime security,

(3) Change of interest rate,

(4) Change in the use of loan funds,

(5) Increase in the principal amount of a loan, except as provided in § 103.22,

(6) Change of the plan of operation,

(7) Amendment or changes in the organization papers of the borrower,

(8) Changes in partnership agreements, and

(9) Change in the location of an enterprise.

(b) Lenders making insured loans which under the provisions of an approved insurance agreement do not require Commissioner approval shall use prudence in approving requests for modifications of loan agreements and follow the lender's customary procedures and practices which are used in connection with noninsured loans made by it. Modifications are to be in compliance with the provisions of §§ 103.13, 103.14, and 103.24. Lenders making insured loans under the provisions of such an insurance agreement shall notify the Commissioner not later than 20 days after approval of a modification of such insured loan. Modifications of the organization papers of corporations or cooperative associations and partnership agreements and plans of operation which originally required Commissioner approval, require approval by the Commissioner upon modification.

§ 103.22 Protective advances.

When provided for in a loan agreement, and subject to the limitations on the amounts and terms of loans as provided in §§ 103.13, 103.14, and 103.24, lenders may advance, for certain purposes, up to 10 percent of the amount for which a guaranteed or insured loan originally was approved. If the borrower is unable to provide the funds or refuses to do so, an advance may be made for purposes necessary and proper for the preservation, maintenance or repair of the property purchased with or given to secure the loan; for accrued taxes, special assessments, ground and water rents, and hazard and liability insurance premiums; and for any other

purpose necessary for the protection of the interest of the lender or borrower. The additional advance will be charged against the borrower. Repayment of the protective advance shall be automatically guaranteed or insured at the same percentage rate as applied to the original amount of the loan upon the Commissioner's receiving notice from the lender that an additional amount has been advanced with a statement as to the necessity and purpose(s) of the advance. Such documentation shall be furnished along with the premium for the additional amount pursuant to § 103.43(b). The amount of any additional advance shall be scheduled for repayment proportionately over the remaining installments of the unpaid principal balance of the loan. The interest rate charged on protective advances as provided for in this section will be determined in accordance with the provisions of § 103.41.

§ 103.23 Increase in principal of loans.

(a) Borrowers requiring additional funds may apply for an increase in a guaranteed or insured loan with the same lender. Applications to increase the amount of guaranteed and insured loans which originally were approved by the Commissioner, require his approval upon increases in amounts. Lenders making insured loans which under the provisions of an approved insurance agreement which did not require Commissioner approval, may approve applications for an increase in the principal of such loans subject to compliance with the limitations contained in §§ 103.14 and 103.24. Such insured lenders shall immediately notify the Commissioner upon approval of an increase in the principal of a loan and remit the premium on the increase pursuant to § 103.43(b).

(b) The application for an increase in the amount of a loan must show the reasons why an increase is needed, the amount and purposes for which the funds will be used, and the repayment schedule. If the financing involves an economic enterprise, the application must be accompanied by the information required in § 103.15(a)(1) through (17) of this part.

(c) The interest rate to be charged on principal increases will be determined in accordance with the provisions of § 103.41.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

§ 103.24 Maturity.

The period of maturity of guaranteed and insured loans will be determined according to the circumstances, but may not extend beyond 30 years from the date of the first advance. All maturities will be consistent with sound business practices and customs of lenders in the area.

§ 103.25 Amortization.

All loans shall be scheduled for repayment at the earliest practicable date consistent with the purpose(s) of the loans and the repayment capacity of the borrowers. Lenders will require amortization in accordance with customary practices in the area for loans for the same purposes. Loan payments may be scheduled for repayment either monthly, quarterly, semi-annually or annually. Balloon installments shall be avoided.

§ 103.26 Prepayments.

Borrowers whose loans are guaranteed or insured under this part 103 shall have the right to prepay all or any part of the indebtedness at any time without penalty unless otherwise provided for in the loan agreement. Lenders and borrowers may agree that prepayments applied to the latest loan installments may be reapplied to current installment(s) to cure or prevent any subsequent default. The Commissioner shall be notified promptly by the lender when payments are made in advance of the due dates.

§ 103.27 Amount of security.

Lenders will require borrowers to give security, if available, up to an amount adequate to protect the loan, without consideration of the guaranty or insurance. The lender shall itemize and describe the collateral given as security as described in §§ 103.15(a)(5) and (10) of this part.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

§ 103.28 Filing and recording.

(a) All securing documents and financing statements, when applicable, except assignments of income from trust land and mortgages on documented vessels, shall be filed or recorded in the appropriate county or other public office in accordance with state law. Mortgages on documented vessels will be filed at the Customs House designated as the home port of the vessel as shown on the marine document. Security interests in personal property will be perfected in accordance with the provisions of Article 9 of the Uniform Commercial Code in states in which the code has been adopted.

(b) Lenders are responsible for filing a copy of assignments of income from trust land with the office of the Bureau of Indian Affairs having jurisdiction over the trust land involved and for filing or recording other securing instruments pursuant to the laws of the state in which the property is located or in the proper Customs House. Lenders must also see that:

(1) Effective liens are maintained at all times;

(2) Taxes on the property included in the securing instruments are paid promptly to prevent such taxes from becoming a lien taking priority over a mortgage; and

(3) Hazard and liability insurance is obtained and maintained in an amount sufficient to protect the security against the risks or hazards to which it may be subjected, to the extent customary in the locality.

Failure of a lender to discharge any of these responsibilities will diminish the amount of the guaranty or insurance to the extent of any loss caused by the lender's failure, unless there are extenuating circumstances which in the judgment of the Commissioner do not justify a reduction of the amount guaranteed or insured.

§ 103.29 Property purchased with loan funds.

(a) Lenders making guaranteed or insured loans which include funds to finance construction of buildings, or installation of water, sewage, electrical or gas lines shall assure that the site is appropriate and adequate; cost estimates are prepared and are in line with current costs; plans are prepared by qualified individuals or a firm; provisions are made to assure compliance with applicable building codes, zoning and labor laws; and inspections are made by qualified inspectors during construction and upon completion. Upon receiving applications involving funds to finance construction, lenders may request assistance and guidance from the Commissioner on such matters. The Commissioner may arrange for an inspection of any property purchased with guaranteed or insured loans at any reasonable time. Property which may be inspected includes proposed building sites, during and on completion of construction of buildings; electrical, sewage, water or gas lines; and livestock and machinery purchased with loan funds.

(b) Lenders will require that any property purchased with a guaranteed or insured loan, except land purchased by a tribe, title to which is taken in trust or restricted status, be mortgaged to the lender as security for the loan, unless the loan is otherwise adequately secured.

§ 103.30 Land.

(a) Indian individuals may execute mortgages or deeds of trust on nontrust or unrestricted land as security without the approval of any Federal official.

(b) Tribal land, title to which is held in a trust or restricted status, may not be mortgaged unless specifically authorized by Congress.

(c) Individually-owned land held in trust or restricted status may be mortgaged as security for a loan in accordance with 25 CFR 152.34 and the Act of March 29, 1956 (70 Stat. 62; 25 U.S.C. 483a). Mortgages of individually held trust or restricted land will include only the acreage of the land owned by a borrower, which the Commissioner considers is adequate to protect the loan in case of default. Mortgages on individually held trust or restricted land shall be subject to foreclosure or sale pursuant to the terms of the mortgage. For the purposes of any foreclosure or sales proceedings, the owner shall be regarded as vested with an unrestricted fee simple title to the land.

The United States shall not be a necessary party to the proceedings pursuant to the Act of March 29, 1956 (70 Stat. 62; 25 U.S.C. 483a). Any conveyance of the land pursuant to such proceedings shall divest the United States of title to the land. Trust or restricted land given as security for a loan shall not be sold or title otherwise transferred without giving the Commissioner and the tribe of the reservation on which the land is located, or is adjacent to, written notice, at least 45 days in advance of the date of sale or proposed transfer of title.

(d) Tribes, corporations, cooperative associations, partnerships, and Indian individuals leasing trust or restricted land may, when provided in the lease and approved by the lessor and the Commissioner, mortgage their leasehold interest in the leased premises for the purpose of borrowing capital for the development and improvement of the leased premises.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

§ 103.31 Chattels.

Tribes, organizations and Indian individuals may execute mortgages on nontrust and unrestricted chattels as security without the approval of any federal official. If a lender requires, the Commissioner may approve mortgages of trust or restricted chattels given to secure guaranteed or insured loans. A tribe must adhere to the provisions of its constitution, bylaws, charter, or other organizational documents in mortgaging chattels. Mortgaged chattels shall be subject to foreclosure or sale pursuant to the terms of the mortgage or security agreement in accordance with applicable laws.

§ 103.32 Crop mortgages.

Crops grown on leased trust or restricted land may be mortgaged as security for a loan with the approval of the lessor and the Commissioner. Individuals owning trust or restricted land may mortgage crops grown on such land as security for a loan with approval of the Commissioner. Crops grown on trust or restricted land after severance from the land and crops grown on nontrust and unrestricted land may be mortgaged as security without the approval of any Federal official.

§ 103.33 Assignments of income.

(a) A tribe or organization may execute assignments of trust income from specific sources as security for loans, pursuant to authorization in its constitution, bylaws, charter, or other organization papers. Tribes may not execute general assignments of trust income as security for loans. Assignments of trust income require approval by the Commissioner before becoming effective.

(b) Assignments of income from the trust or restricted land of an Indian individual may be executed as security for loans with the approval of the Commissioner. However, restricted land of heirs or devisees of members of the Five Civilized Tribes of Oklahoma is subject to the jurisdiction of Oklahoma state courts under the Act of August 4, 1947 (61 Stat. 73).

§ 103.34 Restrictions.

Unless the security for a loan requires approval of a federal official, no restrictions shall be placed by any official upon the security that may be given for a loan. Lenders will document any and all prior security interests of record with respect to proposed collateral. Lenders will use caution in making certain that the security taken is unencumbered. Lenders will follow the same prudent procedures as if the borrower were a non-Indian or a non-Indian organization.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46473, Oct. 8, 1992]

§ 103.35 Release of security.

The prime security for a loan will not be released unless the property is sold and the net proceeds applied to the loan. When approved by the Commissioner, the prime security may be released when the property is sold and the proceeds are used to purchase property of similar nature and use and of at least equal value and lien priority as the property sold and when the lender, borrower and Commissioner agree that the sale and such use of the proceeds

are necessary for the success of an economic enterprise. Lenders may release property which is planned to be sold in the regular course of a business when the proceeds are to be used for purposes which the lender determines are necessary and proper in connection with the type of economic enterprise involved. Releases of security involving trust income or trust or restricted land will require the prior approval of the Commissioner.

§ 103.36 Default on guaranteed loans.

(a) Within 45 calendar days after the occurrence of a default, the lender shall notify the Commissioner by certified or registered mail showing the name of borrower, guaranty certificate number, amount of unpaid principal, amount of principal delinquent, amount of interest accrued and unpaid to date of notice, amount of interest delinquent at time of notice, and other failure of the borrower to comply with provisions of the loan agreement. Within 60 calendar days after default on a loan, the lender shall proceed as prescribed in either paragraph (b), (c), or (d) of this section, unless an extension of time is requested by the lender and approved by the Commissioner. The request for an extension shall explain the reason why a delay is necessary and the estimated date on which action will be initiated. Failure of the lender to proceed with action within 60 calendar days or the date to which an extension is approved by the Commissioner shall cause the guaranty certificate to cease being in force or effect. If the Commissioner is not notified of the failure of a borrower to make a scheduled payment or of other default within the required 45 calendar days, the Commissioner will proceed on the assumption that the scheduled payment was made and that the loan agreement is current and in good standing. The Commissioner will then decrease the amount of the guaranty pro rata by the amount of the due installment and the lender will have no further claim for guaranty as it applied to the installment, except for the interest subsidy on guaranteed loans which may be due.

(b) The lender may make written request that payment be made pursuant to the provisions of the guaranty certificate or guaranty agreement. If the Commissioner finds that a loss has been suffered, the lender may be paid the pro rata portion of the amount guaranteed including unpaid interest.

(c) The borrower and the lender may agree upon an extension of the repayment terms or other forbearance for the benefit of the borrower. The lender may extend all reasonable forbearance if the borrower becomes unable to meet the terms of a loan. However, such forbearance will not be extended if it will increase the likelihood of a loss on a loan. Agreements between a lender and a borrower shall be in writing and will require approval by the Commissioner.

(d) The lender may advise the Commissioner in writing that suit or foreclosure is considered necessary and proceed to foreclosure and liquidation of all security interests. On completion of foreclosure and liquidation, if the Commissioner determines that a loss has been suffered, the lender will be reimbursed for the pro rata portion of the amount of unpaid principal and interest guaranteed. A lender will submit a claim for reimbursement for losses on a form furnished by the Commissioner and will furnish any additional information needed to establish the amount of the claim. On reimbursement of a lender for the pro rata amount of the loss guaranteed as provided in the guaranty certificate, the lender will subrogate its rights and interest in the loan to the United States and assign the loan obligations and security for the loan to the United States. The Commissioner may establish the date on which accrual of interest or charges shall cease. This date may not be later than the date of judgment and decree of foreclosure or sale. The Commissioner will take any action necessary to protect the interest of the United States.

Subsequent to subrogation and assignment, any collections shall be for the account of the United States up to the amount paid on the guaranty plus any costs or expenses incurred by the United States. Collections will be deposited in the loan guaranty and insurance fund established pursuant to this part. Any amounts collected in excess of those necessary to reimburse the United States for amounts paid under

the guaranty plus costs or expenses shall be paid to the lender up to the amount of the lender's losses. Any residue from collection shall go to the borrower.

[57 FR 46473, Oct. 8, 1992]

§ 103.37 Default on insured loans.

Within 45 calendar days after the occurrence of a default of a loan made under the provisions of an insurance agreement, the lender shall notify the Commissioner by certified or registered mail giving the name of the borrower, insurance agreement number, amount of unpaid principal, amount of delinquent principal, accrued interest unpaid to date of notice, amount of delinquent interest and description of default. Within 60 calendar days after default on an insured loan, the lender shall proceed as prescribed in paragraph (a) or (b) of this section unless it has requested, and the Commissioner has approved, an extension of time. A request for an extension of time will explain the necessity for an extension and the estimated date on which action will be initiated. Failure of the lender to proceed within 60 calendar days or the extended time approved by the Commissioner, will be grounds for the Commissioner to terminate the loan insurance on the loan involved.

(a) The lender and borrower may agree upon an extension of the repayment terms of a loan or other forbearance for the benefit of the borrower. However, such forbearance will not be extended if it will increase the likelihood of a loss on a loan. Insured loans made under the provisions of a general insurance agreement authorizing a lender to make loans under the terms prescribed in the agreement will not require Commissioner approval of changes in agreements made by the lender and borrower. Provided, such changes are in compliance with the requirements of § 103.21 and the applicable sections referred to therein. The lender shall immediately notify the Commissioner within 21 calendar days of changes made in the agreement. Insured loans made which originally required the issuance of a separate insurance agreement by the Commissioner will require Commissioner approval of changes in the provisions of such loans.

(b) If an insured lender determines that proceeding under paragraph (a) of this section is contrary to its customary lending practices or is not in the interest of a borrower, it will be required to exhaust all reasonable efforts to collect the loan and to liquidate the security to the fullest extent feasible before submitting a claim for reimbursement of a loss.

(c) If a lender proceeds under the provisions of paragraph (b) of this section and suffers a loss, it may submit a claim for reimbursement for unpaid principal and interest on a form furnished by the Commissioner and will furnish any additional information needed to establish the amount of the claim. Claims will be submitted to the Commissioner within 45 calendar days after completion of the procedures prescribed in this section. All claims shall be accompanied by evidence showing that all reasonable efforts to collect the loan have been exhausted and that security given for the loan has been liquidated to the extent feasible. If the Commissioner agrees that a loss has occurred, he will reimburse the lender pursuant to the terms of the approved insurance agreement under which the loan was insured. Upon reimbursement by the Commissioner to the lender in whole or in part for the loss insured, the note and security for the loan or judgment evidencing the debt shall be assigned to the United States. The lender shall have no further claim against the United States or the borrower. The Commissioner will then take such further collection action as may be warranted. The Commissioner may establish a date upon which accrual of interest or charges shall cease.

§ 103.38 Subrogated and assigned rights.

The Commissioner will take such action as he deemed appropriate to realize the maximum recovery upon the rights to which the United States is subrogated and the security assigned

to the United States. Any amount collected will be deposited in the loan guaranty and insurance fund.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46474, Oct. 8, 1992]

§ 103.39 Cancellation.

The Secretary may cancel the uncollectable portion of any obligation assigned to the United States or rights to which the United States is subrogated and the security assigned to the United States.

[54 FR 34976, Aug. 23, 1989]

§ 103.40 Charges upon liquidation.

Lenders may charge the following against the gross amounts collected from the sale of security in determining the amounts to be claimed under a guaranty certificate or insurance agreement:

(a) Reasonable and necessary expenses for preservation of the security.

(b) Court and attorney costs in a foreclosure or proper judicial proceeding involving the security.

(c) Other reasonable expenses necessary for collecting the debt or for repossession, protection, and liquidation of the security.

(d) Other expenses or fees approved in advance by the Commissioner.

(e) Accrued unpaid interest to the date of judgment and decree of foreclosure or sale, or the date established by the Commissioner that accrued interest shall cease pursuant to §§ 103.36 and 103.37.

§ 103.41 Interest.

Interest rates charged by lenders on guaranteed and insured loans, exclusive of loan service charges, if any, shall not exceed such percent per annum on the principal obligation outstanding as the Commissioner determines to be reasonable and legal at the time a loan is guaranteed or insured, taking into account the range of rates prevailing in the private market for similar loans and the risks assumed by the United States. Each loan shall show the rate of interest to be charged. Interest shall be payable at least annually. Once a loan is closed the interest rate may not be increased except when a variable interest rate tied to a specified base rate agreed upon by the borrower and the lender has been approved by the Commissioner. Lenders may not charge interest on loan funds used for payment of loan service charges.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 54 FR 34976, Aug. 23, 1989]

§ 103.42 Interest subsidy.

(a) The Commissioner may pay an interest subsidy to lenders on loans which are guaranteed or insured under this part 103 at rates which are necessary to reduce the interest rate payable by the borrowers to a rate determined in accordance with title I, section 104, of the Indian Financing Act of 1974 (Pub. L. 93–262, 83 Stat. 77). The rate of subsidy will be established by the Commissioner at the time of issuance of a guaranty certificate or insurance agreement on loans requiring approval by the Commissioner. Interest subsidy payments by the United States shall be discontinued on such loans if the lender elects to discontinue the guaranty or insurance or causes the termination of the guaranty or insurance by failure to make premium payments as required by § 103.43, or when one of the following occurs:

(1) The loan is paid in full prior to the expiration of the original term.

(2) The loan is refinanced by a new loan.

(3) The repayment schedule on the principal balance owing is extended beyond the original term, unless an exception is approved by the Commissioner. The interest subsidy shall only be discontinued as to the balance which has been extended beyond the original term of the loan.

(4) The lender on a defaulted loan is reimbursed for a guaranteed or insured loss. The date of the check shall be the date of reimbursement.

(5) Cash flow form the business being financed appears sufficient to pay for full debt service based on periodic review by the Commissioner. Cash flow shall be deemed sufficient to pay debt service when earnings before interest and taxes, after adjustments for extraordinary items, equal or exceed industry norms.

(b) The lender shall notify the Commissioner that he has made or modified an insured loan under the provisions of a general insurance agreement within 20 days of such action and provide the Commissioner with the following information:

(1) The name and address of the borrower.

(2) Tribal affiliation of the borrower.

(3) Amount of the loan and purpose(s).

(4) The repayment schedule.

(5) The interest rate charged the borrower.

(6) The date(s) funds were advanced.

(c) After receiving notice from the lender, the Commissioner will establish the interest subsidy rate and notify the lender of the rate established. The Commissioner may establish procedures requiring lenders to provide reports which will expedite the prompt payment of interest subsidies. Interest subsidies will be paid on the unpaid principal balance owed by a borrower either annually, semiannually, quarterly or monthly, depending on the time interest is scheduled to be paid and as near the due date as feasible, but not before. Lenders shall notify the Commissioner promptly when borrowers pay interest or principal in advance of the due date(s) provided in the loan agreement. The interest subsidy rate established by the Commissioner will be in effect for three years. At the end of the third year the need for subsidy will be reviewed and extended on an annual basis for the next two years, if justified.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46474, Oct. 8, 1992]

§ 103.43 Premium charges.

A premium of 2.0 percent of the guaranteed portion of a loan will be charged to lenders. The lender may increase the principal amount of the loan by the cost of the premium and charge it to the borrower. The lender shall pay the premium within 90 days of the date of approval of the loan guaranty. Existing lenders may elect to modify their Loan Guaranty and Insurance Agreements with the Bureau of Indian Affairs so as to pay future premium payments in a lump sum. If the guaranty premium is not paid within 90 days of approval of the loan guaranty or modification of the agreement, the Commissioner will send the lender a notice of non-payment. If the premium is not paid within 30 days of the receipt of this notice, the guaranty shall be subject to termination.

[57 FR 46474, Oct. 8, 1992]

§ 103.44 Other charges.

Funds may be included in loans for payment of reasonable and customary costs for legal or architectural services, appraisals, surveys, compliance inspections, title searches, lien searches, recordation costs, hazard and liability insurance premiums, taxes and such other charges as the Commissioner may authorize at the time a loan is made. Loan service charges, if any, may be charged if authorized in the loan agreement. Funds included in a loan for payment of loan service charges may not bear interest pursuant to § 103.41. Payment by the borrower of points, finders fees, loan origination fees, bonuses or commissions for loans guaranteed under this part is prohibited.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46474, Oct. 8, 1992]

§ 103.45 Late charge.

Lenders may assess borrowers a late charge on any loan installment, principal only, received more than 30 days after its due date if the loan agreement at the time of approval contains an authorization to this effect. The rate shall be specified in the loan agreement. The amount of late charges assessed may not be guaranteed or insured. Interest may not be charged on late charges.

§ 103.46 Loan servicing.

(a) The guaranty or insurance of a loan by the Commissioner and the issuance of an insurance agreement will be based on the requirement that adequate loan servicing will be performed by the lender. Loan servicing will be without cost to the borrower, unless the Commissioner authorizes a charge at the time the loan is made pursuant to § 103.44. Authorizations for such

charges shall be in writing and included in the loan agreement. Lenders are expected to follow accepted standards employed by prudent lenders in the area in servicing similar type loans. In servicing loans, lenders will make every effort to prevent and minimize potential losses. Lenders will use prudence in disbursing loan funds to borrowers to assure, to the extent feasible, that loan funds are used only for the purposes for which the loan is made. Unless approved by the Commissioner, any amounts disbursed for purposes other than those provided in the loan agreement shall be excluded in the computing the amount for which the lender may be reimbursed in the event of a loss on a loan.

(b) Loan servicing must meet the following standards regarding billing and documentation. Payments must be routinely invoiced, in most cases on a monthly basis. Invoices shall include the date the payment is due and the date the payment will be considered late (i.e., grace period). Borrowers should be encouraged to use pre-authorized debits or credit cards when making payments. Loan files must contain current information on payment history, including delinquencies and defaults, and any subsequent loan action concerning deferrals, refinancing, or rescheduling. There should be a record of the time and outcome of each contact with the borrower, including notification of delinquent status, requests for repayment, and intent to report the delinquent debt to credit bureaus or to refer debts to collection agencies.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46474, Oct. 8, 1992]

§103.47 Restrictions on lenders.

Loan agreements shall not provide that the lender shall have the right to declare the indebtedness due, or to pursue one or more legal remedies, if the lender ''shall feel insecure''. This restriction shall not prevent a lender from taking action against a borrower due to any act or omission on the part of the borrower which, by the terms of a note, mortgage, or other loan document, would allow the lender to declare a loan in default, nor to take action to minimize the loss on a loan.

§103.48 Title to property purchased with loans.

Title to personal property purchased with a guaranteed or insured loan shall be taken in the name of the borrower without a restriction against alienation. Title to land purchased with a guaranteed or insured loan may be taken pursuant to §103.3. Transactions involving taking title to land purchases in trust or restricted status require approval of the Commissioner.

§103.49 Fraud or misrepresentation.

(a) Lenders shall use prudence in checking and verifying information contained in loan applications as well as supporting papers and documents in order to assure their accuracy and the validity of signatures.

(b) There shall be no liability on the part of the United States to reimburse an insured lender for that portion of an insured loss on a loan caused by:

(1) The lender's negligence in checking and verifying signatures, information in the loan application, supporting papers and documents;

(2) The lender's furnishing false information to induce the issuance of an insurance agreement by the Commissioner;

(3) The lender's furnishing false information in a loan docket on a loan made under the provisions of a general insurance agreement issued by the Commissioner; or

(4) The lender's willful or negligent action which resulted in a fraud, forgery or misrepresentation.

(c) There shall be no liability on the part of the United States to reimburse a lender on a guaranteed loan for that amount of the guaranteed loss caused by:

(1) The lender's negligence in checking and verifying signatures, information in the loan application, supporting papers and documents;

(2) The lender's furnishing false information to induce the issuance of a guaranty certificate by the Commissioner; or

(3) The lender's willful or negligent action which permitted a fraud, forgery or misrepresentation.

A reduction will not be made in the amount of reimbursement on a guaranteed loss to a purchaser, assignee, or transferee who acquired the loan before maturity for value and did not directly or by agent participate in or have prior knowledge of a fraud, forgery or misrepresentation.

§ 103.50 Loan guaranty and insurance fund.

(a) The loan guaranty and insurance fund shall be utilized for all loan guaranty and insurance operations pursuant to the regulations in this part 103. All receipts from operations including premium charges shall be deposited in this fund. All disbursements incident to administering guaranteed and insured loans shall be made from this fund. All cash, claims, notes, mortgages, contracts, and property acquired by the Secretary under this part 103 shall constitute assets of the fund. All liabilities and obligations of such assets shall be liabilities and obligations of the fund.

(b) The Commissioner will design an accounting system that will reflect at all times the financial condition of the fund and the results from its operation.

(c) Interest subsidies paid by the Commissioner pursuant to § 103.42 shall be paid from the loan guaranty and insurance fund and charged against an ''interest subsidy account'' as an expense of the fund.

§ 103.51 Sale or assignment of guaranteed loans.

Any guaranteed loan, including the security and guaranty certificate, may be sold to any person. The person acquiring the loan shall notify the Commissioner in writing with 30 days after acquisition. The notice will give the name of the borrower, the certificate number, the amount of principal and interest unpaid on the loan, and the security acquired. Failure of the acquirer to notify the Commissioner within 30 days of acquisition will void the guaranty unless the Commissioner authorizes an exception because of extenuating circumstances.

[40 FR 12492, Mar. 19, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 57 FR 46475, Oct. 8, 1992]

§ 103.52 Records.

Lenders will maintain adequate records on guaranteed and insured loans made and will submit reports to keep the Commissioner informed regarding guaranteed and insured loans made. The Commissioner may prescribe the number of reports to be submitted annually, the dates, and the forms to be used for reporting. The Commissioner may have the records of lenders inspected at any reasonable time during regular business days and hours.

§ 103.53 Suspension of lenders.

Whenever the Commissioner finds that any lender or holder of a guaranty certificate or insured loan fails to maintain adequate accounting records, to demonstrate proper ability to adequately service loans guaranteed or insured, or to exercise proper credit judgment, or has willfully or negligently engaged in practices detrimental to the interests of a borrower or of the United States, he may refuse, either temporarily or permanently, to guarantee or insure any additional loans made by such lender or certificate holder. He may also bar such lender or certificate holder from acquiring additional loans guaranteed under this part 103. However, the Commissioner shall not refuse to pay a valid guaranty or insurance claim on loans previously made in good faith.

§ 103.54 Probate.

(a) The estates of deceased borrowers who die possessed of trust property or funds and who gave as secruity for a guaranteed or insured loan an assignment of income from trust property, a mortgage or deed of trust on trust or restricted land, or a lien on trust chattels or crops growing on trust land will be probated in accordance with the applicable regulations in subpart D of 43 CFR part 4 and in parts 16 and 17 of 25 CFR. The Superintendent or other Bureau official having jurisdiction over the trust property and trust funds of a decedent shall promptly notify the lender on receipt of information confirming the demise of a borrower. The notice may be given by furnishing the

lender with a copy of the Superintendent's report to the Administrative Law Judge or by separate letter.

(b) A lender receiving information from a Superintendent or otherwise learning of the demise of a borrower shall notify the Administrative Law Judge of the lender's claim against the decedent's trust estate. The lender's notice to the Administrative Law Judge shall include:

(1) The name of the borrower.

(2) The balance owing on the loan.

(3) The trust property or income given as security for the loan.

(4) A copy of securing documents.

(5) A copy of the guaranty certificate or insurance agreement.

(c) Within 15 days after receiving information that a borrower has died, the lender shall notify the Commissioner of this fact by furnishing a copy of the information provided to the Administrative Law Judge or by separate letter furnishing:

(1) The name of the borrower.

(2) The guaranty certificate number or insurance agreement number.

(3) The balance owing on loan.

(4) Any anticipated action which will be taken to protect the interests of the lender and the United States.

(d) The notice shall be sent by registered or certified mail.

§ 103.55 Information collection.

(a) The collection of information contained in § 103.15 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0020. The information will be used to rate applicant in accordance with the terms and conditions set forth in §§ 103.4, 103.9, 103.15, 103.36, 103.37, 103.42, 103.43, and 103.52 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* information will be is sued to rate applicants in accordance with the terms and conditions set forth in section 103 of the Indian Financing Act, as amended. Response is required to obtain a benefit in accordance with 25 U.S.C. 1451.

(b) Public reporting burden for this information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337–SIB, 18th and C Streets NW., Washington, DC 20240; and the Paperwork Reduction Project (1076–0020), Office of Management and Budget, Washington, DC 20503.

[54 FR 34975, Aug. 23, 1989]

PART 111—ANNUITY AND OTHER PER CAPITA PAYMENTS

Sec.
111.1 Persons to share payments.
111.2 Enrolling non-full-blood children.
111.3 Payments by check.
111.4 Election of shareholders.
111.5 Future payments.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10549, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 111.1 Persons to share payments.

In making all annuity and other per capita payments, the funds shall be equally divided among the Indians entitled thereto share and share alike. The roll for such payments should be prepared on Form 5–322,[1] in strict alphabetical order by families of husband, wife, and unmarried dependent minor children. Unless otherwise instructed,

(a) Indians of both sexes may be considered adults at the age of 18 years;

(b) Deceased enrollees may be carried on the rolls for one payment after death;

(c) Where final rolls have been prepared constituting the legal membership of the tribe, only Indians whose names appear thereon are entitled to share in future payments, after-born children being excluded and the shares of deceased enrollees paid to the heirs if determined or if not determined credited to the estate pending determination; and

[1] Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

(d) The shares of competent Indians will be paid to them directly and the shares of incompetents and minors deposited for expenditure under the individual Indian money regulations.

CROSS REFERENCES: For regulations pertaining to the determination of heirs and approval of wills, see part 15 and §§ 11.30 through 11.32C of this chapter. For individual Indian money regulations, see part 115 of this chapter.

§ 111.2 Enrolling non-full-blood children.

Where an Indian woman was married to a white man prior to June 7, 1897, and was at the time of her marriage a recognized member of the tribe even though she left it after marriage and lived away from the reservation, the children of such a marriage should be enrolled—and, also in the case of an Indian woman married to a white man subsequent to the above date but who still maintains her affiliation with the tribe and she and her children are recognized members thereof; however, where an Indian woman by marriage with a white man after June 7, 1897, has, in effect, withdrawn from the tribe and is no longer identified with it, her children should not be enrolled. In case of doubt all the facts should be submitted to the Bureau of Indian Affairs, Washington, D.C., for a decision.

§ 111.3 Payments by check.

All payments should be made by check. In making payments to competent Indians, each check should be drawn to the order of the enrollee and given or sent directly to him. Powers of attorney and orders given by an Indian to another person for his share in a payment will not be recognized. Superintendents will note in the ''Remarks'' column on the roll the date of birth of each new enrollee and the date of death of deceased annuitants.

§ 111.4 Election of shareholders.

An Indian holding equal rights in two or more tribes can share in payments to only one of them and will be required to elect with which tribe he wishes to be enrolled and to relinquish in writing his claims to payments to the other. In the case of a minor the election will be made by the parent or guardian.

§ 111.5 Future payments.

Indians who have received or applied for their pro rata shares of an interest-bearing tribal fund under the act of March 2, 1907 (34 Stat. 1221; 25 U.S.C. 119, 121), as amended by the act of May 18, 1916 (39 Stat. 128), will not be permitted to participate in future payments made from the accumulated interest.

PART 112—REGULATIONS FOR PRO RATA SHARES OF TRIBAL FUNDS

Sec.

112.1 Fee simple patentees.
112.2 Applicants who have received neither fee simple patents nor certificates of competency.
112.3 Applicants who are mentally or physically incapable of managing their affairs.
112.4 Interest in pro rata shares not vested rights unless application approved.
112.5 Basis of distribution; pro rata shares.
112.6 Disposition of pro rata share in event of applicant's death.
112.7 Pro rata shares of minors.

AUTHORITY: Sec. 2, 34 Stat. 1221, as amended; 25 U.S.C. 121.

SOURCE: 22 FR 10549, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

CROSS REFERENCE: For regulations pertaining to the determination of heirs and approval of wills, see part 15 and §§ 11.30 through 11.32 of this chapter.

§ 112.1 Fee simple patentees.

When the applicant has been granted a patent in fee or certificate of competency, that fact will be accepted as prima facie evidence of his competency, but in forwarding applications of this class the agent will give the date on which the patent was issued, report whether in his judgment the patentee has made proper use of his privileges and would make good use of his share of the tribal funds if paid to him, and make a specific recommendation for approval or disapproval of the application.

§112.2 Applicants who have received neither fee simple patents nor certificates of competency.

In the case of an applicant who has received neither a fee simple patent nor a certificate of competency, the application must be accompanied by evidence which will establish the fact that he is capable of managing his own affairs. In forwarding applications of this class the superintendent will report fully, as follows:

(a) Is the applicant living on this allotment? If so, is he making reasonable efforts to cultivate his land and to support himself and family? If he is not living on his allotment, what is his occupation?

(b) Is any part of his allotment leased? If so, to what extent does he depend upon the rent therefrom to support himself and family?

(c) Has the applicant been given the privilege of leasing his own lands; and if so, with what result?

(d) Has he an interest in any inherited land? If he has sold or leased any inherited land, how has he managed the proceeds?

(e) Is the applicant of good moral character?

(f) Is he addicted to the use of intoxicants? And if so, does this habit, in the judgment of the agent, unfit him to make proper use of his share of the tribal funds?

(g) What is his physical condition?

(h) Is the applicant in debt? If so, to what extent and for what purpose was the debt incurred?

(i) Has the applicant the necessary business qualifications to enable him to manage his own affairs?

(j) Give such other information concerning the applicant as will aid the office in determining whether or not to approve his application.

(k) Make a specific recommendation for the approval or disapproval of the application.

§112.3 Applicants who are mentally or physically incapable of managing their affairs.

Applications of this class must be accompanied by evidence that will establish the advisability of withdrawing the share. If the application is approved, the funds will be deposited to the credit of the Indian and handled as individual Indian money.

In forwarding applications the agent will report fully as follows:

(a) Sex and exact date of birth.

(b) Identify the applicant by allotment and last annuity-roll numbers.

(c) What is the actual physical condition of the applicant. If suffering from disease, submit certificate of physician if necessary to establish disability.

(d) What is the actual mental condition of the applicant? Answer fully.

(e) What are the material resources of the applicant?

(f) What advantages will accrue to applicant by withdrawal of his or her share at this time?

(g) Has it been explained to the applicant and does he understand that if the application is approved the funds will be deposited to his credit as individual Indian money to be expended under the supervision of the superintendent?

(h) Make a specific recommendation for the approval or disapproval of the application.

[22 FR 10549, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 48 FR 13414, Mar. 31, 1983]

CROSS REFERENCE: For individual Indian money regulations, see part 115 of this chapter.

§112.4 Interest in pro rata shares not vested rights unless application approved.

On November 6, 1908, the Secretary of the Interior decided, in effect, that the interest of an Indian in a pro rata share of a tribal fund does not vest in the Indian an inheritable property until after his application has been approved by the Secretary and an order signed by him segregating it from the tribal fund. Applications for shares of funds under this act may be made at any time, but in view of the Secretary's decision such applications should be forwarded to the Bureau by the superintendent as soon as they are completed and filed with him. Applications from those who are blind, decrepit, etc., must be made special and forwarded to the Bureau of Indian Affairs, Washington, D.C., as soon as possible.

§ 112.5 Basis of distribution; pro rata shares.

In estimating the pro rata share of an individual, the last annuity payroll prior to July 1, or January 1 of each year will be taken as a basis of distribution. Where no payment has been made within 1 year, the last census, if taken within the year, will be the basis. If no census has been taken or payment made within a year, the last available record—either census or annuity roll will be used.

§ 112.6 Disposition of pro rata share in event of applicant's death.

In the event of the death of an applicant prior to the approval of his application by the Secretary of the Interior, the share to which he would have been entitled, if living, will revert to the tribe. In case of the death of an applicant after approval of his application and the signing by the Secretary of the Interior of an order for the segregation of his share, but before payment is made, his share will descend to his legal heirs and should be deposited to the credit of the estate pending formal determination thereof.

CROSS REFERENCE: For regulations pertaining to the determinations of heirs and approval of wills, see part 15 and §§ 11.30 through 11.32C of this chapter.

§ 112.7 Pro rata shares of minors.

The shares of minors will not be withdrawn except when necessary for their own benefit. The application should be signed by the parent or guardian and transmitted to the Bureau by the superintendent with his recommendation as in other cases and a full explanation of the circumstances which justify the withdrawal. Such shares will be deposited to the credit of the minors subject to expenditure under the individual Indian money regulations. The term ''minor,'' as used in this section, shall be interpreted in conformity with the State law.

CROSS REFERENCE: For individual Indian money regulations, see part 115 of this chapter.

PART 114—SPECIAL DEPOSITS

Sec.

114.1 Purpose and scope.
114.2 Definitions.
114.3 Investment of special deposit funds.
114.4 Payment and distribution of interest on special deposit funds.
114.5 Distribution of IMPL Escrow Account.

AUTHORITY: 25 U.S.C. 2; 25 U.S.C. 9; Pub. L. 97–100; and Pub. L. 97–257.

SOURCE: 48 FR 48808, Oct. 21, 1983, unless otherwise noted.

§ 114.1 Purpose and scope.

The purpose of these regulations is to set forth the conditions governing the deposit, investment, and distribution of interest on funds held by the Bureau in special deposits; and to provide procedures required for determination of ownership and distribution of funds which are on deposit in account 14X6703 ''Indian Moneys Proceeds of Labor Escrow Account—Pending Determination of Ownership''.

§ 114.2 Definitions.

(a) ''Agency'' means any field office of the Bureau officially designated as an Indian agency and which provides direct services at the local level to Indians and Indian tribes, who are recognized by the Bureau as eligible for federal services to Indians because of their status as Indians.

(b) ''Agency IMPL Escrow Account'' means that portion of the funds in 14X6703 identifiable to that agency.

(c) ''Beneficiary'' means a potential beneficiary who has signed an acceptance.

(d) ''Bureau'' or ''BIA'' means the Bureau of Indian Affairs, Department of the Interior.

(e) ''Claimant'' means an individual (or a tribe) who asserts an entitlement to a share of the IMPL Escrow Account but has not been determined as a potential beneficiary.

(f) ''IMPL Escrow Account'' means account 14X6703, Indian Moneys, Proceeds of Labor Escrow Account—Pending Determination of Beneficiaries, U.S. Treasury.

(g) ''Potential beneficiary'' means an individual or tribe determined eligible to share in the IMPL Escrow Account provided a proper acceptance is received on behalf of the individual or tribe involved.

(h) ''Principal account'' means each separate payment or deposit of money

to the Bureau which is held as a special deposit.

(i) ''Special deposit'' means any suspense account used for the temporary deposit of funds which cannot be credited to specific accounts or readily distributed, including, but not limited to:

(1) Advance deposits;

(2) Advance deposits on other leases and permits for such Indian lands;

(3) Advance payments and advance deposits required on sales of timber and other natural resources from such Indian lands;

(4) Deposits for rights of way over such Indian lands and anticipated right-of-way damages held until such damages are determined; and

(5) Deposits for grazing fees on such Indian lands.

(j) ''Special deposit funds'' means those funds held in special deposits.

(k) ''Superintendent'' means the Bureau official in charge of a Bureau agency.

§114.3 Investment of special deposit funds.

It is the policy of the Bureau to invest all special deposit funds which have been paid to the Bureau on behalf of Indians or Indian tribes pending the eventual payment for the sale, lease, or other transfer of tribal or individual Indian property and funds which are deposited solely for the purpose of guaranteeing performance.

§114.4 Payment and distribution of interest on special deposit funds.

(a) It is the general policy of the Bureau that interest and earnings from the investment of special deposit funds be credited to the principal accounts upon which the interest was earned.

(b) At the time that a withdrawal is made from a special deposit account, the interest earned by the principal account being withdrawn will be computed and withdrawn from the account as a part of the same transaction. The interest earned by the subject principal amount will be computed into two parts:

(1) The portion of interest credited during the prior interest period which was attributable to this principal, and

(2) The portion of interest which has been earned by this principal amount but has not yet been credited to the account because the interest period is not complete. This will be computed by using the month-end balances since the last interest period times the last period's factor.

(c) No interest will be distributed to accounts which have less than the minimum average month-end balances as determined by the Division of Accounting Management. Any such interest not distributed would remain in the undistributed interest account at the Bureau level to be included in determining the next six month interest factor.

§114.5 Distribution of IMPL Escrow Account.

(a) *Determination of potential beneficiaries.* Each agency will determine the potential beneficiaries and their respective shares of the IMPL Escrow Account at that agency by the following method:

(1) Identify the unobligated balance in the agency IMPL account as of September 30, 1982, and interest accrued for the period ending September 30, 1982, which has subsequently been transferred into account 14X6703 IMPL Escrow Account Pending Determination of Ownership. This amount will be called the agency IMPL Escrow Account balance.

(2)(i) Identify the length of time which has been required to accumulate actual income into the former IMPL account to equal the current agency IMPL Escrow Account balance.

(ii) To determine the beginning date for ownership computations, subtract the length of time identified in paragraph (a)(2)(i) of this section from April 1, 1981. (Subsequent to April 1, 1981, interest earned on special deposits has been credited directly to each special deposit account rather than to an IMPL account.)

(3) Examine the Individual Indian Money (IIM) accounts to determine the total dollars transferred to each account from the principal in special deposit accounts during the period identified in paragraph (a)(2) of this section.

(4) Examine tribal treasury account records to determine the total dollars transferred to each tribal trust account from the principal in special deposit

accounts during the period identified in paragraph (a)(2) of this section.

(5) Determine the percentage of the principal transferred from special deposit accounts into each IIM and tribal trust account. This is done by dividing the total amount of principal transferred from special deposit accounts into all accounts at the agency into the total computed for each IIM and tribal trust account pursuant to paragraphs (a)(3) and (a)(4) of this section. The formula is as follows:

$$\frac{\text{Dollars transferred into an account}}{\text{Total dollars transferred by agency into all accounts}} = \text{Percent share for that account}$$

(6) Multiply this percentage by the agency IMPL Escrow Account balance to determine each potential beneficiary's share of that balance. Should this determined share be less than ten dollars ($10.00) no transfer of funds will be made.

(7) The formula identified in paragraph (a)(5) of this section will be used in determining potential shares unless there are clear and available records at the agency level to identify specific amounts. If the records are used by the agencies they must be made available for public review upon request.

(b) *Notification of determination of potential beneficiaries.* Upon completion of the determination of all potential beneficiaries of an agency IMPL Escrow Account, the Superintendent shall publish a general notice which shall contain the following:

(1) Brief history of agency IMPL Escrow Account;

(2) Explanation of method of determination of potential beneficiaries;

(3) Information on availability of specific data;

(4) Instruction to potential beneficiaries on completion of acceptance forms, explaining that only those who complete the acceptance forms can receive any funds; and

(5) Establishment of deadline date by which potential beneficiaries must complete the acceptance forms to receive the funds. This deadline will be 180 days from the date of the general notice. This general notice shall be published in the usual and customary manner for making public such documents. If such usual and customary publication does not include posting on the agency bulletin board and publication in at least one local newspaper of general distribution, the posting on the bulletin board and local newspaper publication shall be done in addition to the usual and customary manner of publication.

(c) *Acceptance by potential beneficiary.* Before the funds identified in paragraph (a) of this section as transferable to a potential individual or tribal beneficiary can be deposited into that potential beneficiary's account the following must be completed:

(1) The potential beneficiary must sign an acceptance of the determination by the Secretary which shall constitute a complete release and waiver of any and all claims by the potential beneficiary against the United States relating to the unobligated balance of IMPL accounts as of the close of business on September 30, 1982.

(2) The acceptance must be signed during the 180 days between the date of the general notice provided for in paragraph (b) of this section and the deadline date established therein.

(3) In the case of a potential tribal beneficiary, the acceptance must be accompanied by a resolution of the appropriate tribal entity approving the acceptance and authorizing the designated tribal representative(s) to sign the acceptance. An acceptance on behalf of an estate account may be signed by the Superintendent if the determination of heirs has not become final and may be signed on behalf of individual inherited shares by each heir if the probate determination has become final. An acceptance on behalf of a minor may be signed by a parent, guardian or a person acting *in loco parentis.* An acceptance on behalf of an adult who has been determined legally incompetent or in need of assistance in managing his/her affairs pursuant to 25 CFR 115.9 may be signed by his/her authorized representative.

(d) *Distribution.* (1) After the expiration of the deadline established in paragraph (b) of this section, funds of

individual beneficiaries who have completed the acceptance forms will be transferred from the IMPL Escrow Account into each beneficiary's IIM account. Funds derived from beneficiary estate accounts for which the heirs have been determined will be transferred into the heirs' accounts. Funds derived from beneficiary estate accounts for which the heirs have not been determined will be transferred into the estate account.

(2) Interest accrued for any period after October 1, 1982 will be credited to the beneficiary accounts on the same percentage basis as the original share.

(3) After the expiration of the deadline established in paragraph (b) of this section, funds of a tribal beneficiary and interest earned thereon since October 1, 1982, will be transferred into the appropriate tribal treasury account.

(4) Not more than ten percent (10%) of the funds which may be transferred to a trust account for any tribe, or to an IIM account for an individual, may be utilized by the beneficiary to pay for legal or other representation relating to claims for such funds.

(5) Not more than two percent (2%) of the funds which may be transferred to a trust account for any tribe, or to an IIM account for an individual, may be utilized by the BIA to reimburse the BIA for administrative expenses incurred in determining ownership of the funds.

(e) *Appeals.* (1) Any potential beneficiary or claimant may appeal any decision made or action taken by a Superintendent under this section. Such appeal shall be made in writing and submitted as provided in 25 CFR part 2.

(2) As provided in part 2, the appeal must be received within 30 days after receipt of the written notice advising the potential beneficiary of his/her share of the IMPL Escrow Account or advising the claimant that no share has been determined for him/her. No appeals will be accepted under this section after September 30, 1985.

(f) *Distribution of residual funds.* (1) After final administrative determination of ownership, including final determination of all appeals, and the completion of all appropriate fund transfers, but not later than October 1, 1985, any funds remaining in an agency IMPL Escrow Account may be expended subject to the approval of the Secretary for any purpose authorized under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13), and requested by the governing body(s) of the tribe(s) at the location(s) where such agency IMPL Escrow Account is maintained. This authority to expend the escrow account funds ends September 30, 1987.

(2) The unobligated balances of all IMPL Escrow Accounts as of the close of business on September 30, 1987, shall be deposited into miscellaneous receipts of the U.S. Treasury.

PART 115—INDIVIDUAL INDIAN MONEY ACCOUNTS

Sec.
115.1 Definitions.
115.2 Osage Agency.
115.3 Individual accounts.
115.4 Minors.
115.5 Adults under legal disability.
115.6 Voluntary deposits.
115.7 Payments by other Federal agencies.
115.8 Purchase orders.
115.9 Restrictions.
115.10 Procedures relative to restrictions.
115.11 Funds of deceased Indians other than the Five Civilized Tribes.
115.12 Funds of deceased Indians of the Five Civilized Tribes.
115.13 Assets of members of the Agua Caliente Band of Mission Indians.
115.14 Appeals.
115.15 Information collection.

AUTHORITY: R.S. 441, as amended, R.S. 463, R.S. 465; 5 U.S.C. 301; 25 U.S.C. 2, 9; 43 U.S.C. 1457.

SOURCE: 23 FR 7942, Oct. 15, 1958, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 115.1 Definitions.

As used in this part:

(a) The term ''individual Indian money accounts'' means those accounts under the control of the Secretary of the Interior or his authorized representative belonging to individuals.

(b) The term ''minor'' means an individual who has not reached his majority as defined by the laws of the State of his domicle.

§ 115.2 Osage Agency.

The provisions of this part do not apply to funds the deposit or expenditure of which is subject to the provisions of part 117 of this subchapter.

§ 115.3 Individual accounts.

Except as otherwise provided in this part, adults shall have the right to withdraw funds from their accounts. Upon their application, or an application made in their behalf by the Secretary or his authorized representative, their funds shall be disbursed to them. All such disbursements will be made at such convenient times and places as the Secretary or his authorized representatives may designate.

§ 115.4 Minors.

(a) Funds, other than a per capita share of judgment funds which exceeds $100 in total amount at the time actual payment is made, including the investment income accruing thereto, of a minor may be disbursed in such amounts deemed necessary in the best interest of the minor for the minor's support, health, education, or welfare to parents, legal guardians, fiduciaries, or to persons having the control and custody of the minor under plans approved by the Secretary, or the minor directly, upon such conditions as the Secretary may prescribe. The Secretary will require modification of an approved plan whenever deemed in the best interest of the minor.

(b) A per capita share of judgment funds which exceeds $100 in total amount at the time actual payment is made, including the investment income accruing thereto, of a minor shall not be disbursed until the minor reaches 18 years of age. At that time, unless the minor is under legal disability, the minor shall be entitled to withdraw his judgment funds and accrued investment income as provided in § 115.3. If the minor is under legal disability upon reaching his majority, his judgment funds and accrued investment income thereon shall be handled pursuant to § 115.5.

[41 FR 48736, Nov. 5, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 115.5 Adults under legal disability.

The funds of an adult who is non compos mentis or under other legal disability may be disbursed for his benefit for such purposes deemed to be for his best interest and welfare, or the funds may be disbursed to a legal guardian or curator under such conditions as the Secretary or his authorized representative may prescribe.

§ 115.6 Voluntary deposits.

As a general rule, voluntary deposits shall not be accepted. Indians who require banking service shall be encouraged to utilize commercial facilities. If in any case it is determined that an exception to this prohibition should be made to avoid a substantial hardship, the facts in the case shall be considered by the Secretary or his authorized representative and an exception will be allowed or denied.

§ 115.7 Payments by other Federal agencies.

Moneys received from the Veterans Administration or other Government agency pursuant to the act of February 25, 1933 (47 Stat. 907; 25 U.S.C. 14), may be accepted and administered for the benefit of adult Indians under legal disability or minors for whom no legal guardian or fiduciary has been appointed.

§ 115.8 Purchase orders.

Purchase orders may be issued only in emergencies upon the request of any account holder. The Secretary or his authorized representative may act in emergencies on behalf of an account holder who is unable to make a request because of illness or incapacity or, to meet expenses of last illness or funeral.

§ 115.9 Restrictions.

Funds of individuals may be applied by the Secretary or his authorized representative against delinquent claims of indebtedness to the United States or any of its agencies or to the tribe of which the individual is a member, unless such payments are prohibited by acts of Congress, and against money judgments rendered by courts of Indian offenses or under any tribal law and order code. Funds derived from the sale

of capital assets which by agreement approved prior to such sale by the Secretary or his authorized representative are to be expended for specific purposes, and funds obligated under contractual arrangements approved in advance by the Secretary or his authorized representative or subject to deductions specifically authorized or directed by acts of Congress, shall be disbursed only in accordance with the agreements (including any subsequently approved modifications thereof) or acts of Congress. The funds of an adult whom the Secretary or his authorized representative finds to be in need of assistance in managing his affairs, even though such adult is not non compos mentis or under other legal disability, may be disbursed to the adult, within his best interest, under approved plans. Such finding and the basis for such finding shall be recorded and filed with the records of the account.

CROSS REFERENCE: For rules governing the payment of judgments from individual Indian money accounts, see § 11.26 of this chapter.

§ 115.10 Procedures relative to restrictions.

(a) If under § 115.9 an individual's access to funds in the individual's Indian money account is limited, or it is proposed to pay creditors, including creditors with judgments from Courts of Indian Offenses, for which preliminary procedures are prescribed in 25 CFR 11.26, the individual must be notified in writing as follows:

(1) The notice must be given to the individual affected at the commencement of the restriction or at least 40 days prior to involuntary distribution of funds from the account.

(2) The notice must state the reasons giving rise to the restriction or proposed payment.

(3) The notice shall inform the individual of the right to a hearing and that a request for a hearing must be in writing, received by the Secretary, or an authorized representative, within 30 days of receiving the notice of proposed action.

(4) The notice of proposed action shall be sent by Certified Mail-Return Receipt Requested. The date appearing on the returned receipt shall constitute the beginning of the restriction period.

(5) The notice shall state that a copy of the rights listed in paragraph (c) of this section are transmitted along with the notice.

(6) The notice shall advise that if the individual wishes to have the delinquent claim or money judgment paid without delay and without a hearing the individual can so request by signing a form furnished for that purpose with the notice.

(b) If the individual fails to request a hearing, the individual is deemed to consent to the continued limitation on and/or disbursement of funds from the IIM Account in accordance with the terms of the notice. Notwithstanding the continuance of a restriction on an account, if the amount of funds available in the account exceeds the amount of the restriction or the amount of the claim such unrestricted funds in excess of the amount of the restriction or claim shall be available for the account holder's use.

(c) The Secretary, or an authorized representative, shall conduct a hearing, if no requested as specified above, to determine whether to continue to restrict the Individual Indian Money Account, and/or allow payment of delinquent claims and judgments of tribal courts and courts of Indian offenses from such accounts. The following are requirements for such a fair hearing:

(1) The hearing shall be held within 10 working days of the Secretary's or an authorized representative's receipt of the request for a hearing.

(2) The individual must be given the opportunity to be heard. This includes the right to hear the case against the individual; to present testimony, to present witnesses, and to question and rebut opposing witnesess. This includes the right to orally present arguments and evidence. The account holder may be heard on why a judgment of a tribal court or court of Indian offenses should not be paid from his or her Individual Indian Money account, but he or she may not relitigate the facts established by that court.

(3) If the individual desires an attorney or other representative, one may be retained at the individual's own expense.

(4) The decision to uphold or overturn the proposed action, must be made by the Secretary, or an authorized representative, and must be based on information presented or referred to at the hearing. The decision of an authorized representative of the Secretary may be appealed as provided in § 115.14.

(5) The Secretary, or an authorized representative, shall make provisions for recording the hearing and shall preserve the record for the duration of the appeal period. Tape recording the hearing is sufficient.

(6) The Secretary, or an authorized representative, will advise all parties concerned, in writing, of a decision with-in 10 working days after completion of the hearing.

(d) No money except as provided in subsection (b) of this section, shall be paid from an Individual Indian Money Account or applied against a delinquent claim or judgment of a tribal court or court of Indian offenses until the decision on the claim has become final in accordance with the appeal procedures provided for in § 115.14.

[51 FR 2874, Jan. 22, 1986]

§ 115.11 Funds of deceased Indians other than the Five Civilized Tribes.

Funds of a deceased Indian other than those of the Five Civilized Tribes may be disbursed

(a) For the payment of obligations previously authorized, including authorized expenses of last illness;

(b) For authorized funeral expenses;

(c) For support of dependent members of the family of decedent in such amounts deemed necessary to avoid hardship and consistent with the value of the estate and the interest of probable heirs;

(d) For necessary expenses to conserve the estate pending the completion of probate proceedings; and

(e) For probate fees and claims allowed pursuant to part 15 of this chapter.

[23 FR 7942, Oct. 15, 1958. Redesignated at 47 FR 13327, Mar. 30, 1982, and further redesignated at 51 FR 2874, Jan. 22, 1986]

§ 115.12 Funds of deceased Indians of the Five Civilized Tribes.

Funds of a deceased Indian of the Five Civilized Tribes may be disbursed to pay ad valorem and personal property taxes, Federal and State estate and income taxes, obligations approved by the Secretary of his authorized representative prior to death of decedent, expenses of last sickness and burial and claims found to be just and reasonable which are not barred by the statute of limitations, costs of determining heirs to restricted property by the State courts, and claims allowed pursuant to part 16 of this chapter.

[23 FR 7942, Oct. 15, 1958. Redesignated at 47 FR 13327, Mar. 30, 1982, and further redesignated at 51 FR 2874, Jan. 22, 1986]

§ 115.13 Assets of members of the Agua Caliente Band of Mission Indians.

(a) The provisions of this section apply to money or other property, except real property, held by the United States in trust for such Indians, which may be used, advanced, expended, exchanged, deposited, disposed of, invested, and reinvested by the Director, Palm Springs Office, in accordance with the Act of October 17, 1968 (Pub. L. 90–597). The management or disposition of real property is covered in other parts of this chapter.

(b) Investments made by the Director, Palm Springs Office, under the Act of October 17, 1968, supra, shall be of such a nature as will afford reasonable protection of the assets of the individual Indian involved. The Director is authorized to enter into contracts for the management of the assets (except real property) of individual Indians. The consent of the individual Indian concerned must be obtained prior to the taking of actions affecting his assets, unless the Director determines, under the provisions of section (e) of the Act, that consent is not required.

(c) The Director may, consistent with normal business practices, establish appropriate fees for reports he requires from guardians, conservators, or other fiduciaries appointed under State law for members of the Band.

[33 FR 16636, Nov. 15, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982, and further redesignated at 51 FR 2874, Jan. 22, 1986]

§115.14 Appeals.

Appeals from an action taken by an official of the Bureau of Indian Affairs may be taken pursuant to 25 CFR part 2, subject to the terms of §115.10(c)(2).

[51 FR 2874, Jan. 22, 1986]

§115.15 Information collection.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.*

[51 FR 2875, Jan. 22, 1986]

PART 116—CREATION OF TRUSTS FOR RESTRICTED PROPERTY OF INDIANS, FIVE CIVILIZED TRIBES, OKLAHOMA

Sec.
116.1 Application for trust.
116.2 Obligations of trust company.
116.3 Secretarial approval discretionary.
116.4 Contents trust agreement.
116.5 Eligibility of appraisers.
116.6 Aiding Indians in formulating trust agreements.
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116.8 Trustee's security.
116.9 Trustee's compensation.
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116.11 Limit restricted property in trust.
116.12 Amendments.

AUTHORITY: Sec. 7, 47 Stat. 778.

SOURCE: 22 FR 10552, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§116.1 Application for trust.

Indians desiring to establish trust estates under the provisions of the said act must make written application therefor to the Secretary of the Interior through the superintendent or other official in charge of the Five Civilized Tribes Agency, Muskogee, Oklahoma. The application shall designate the trustee, the beneficiary or beneficiaries and the manner in which it is desired the corpus of the estate shall be distributed upon the termination of the trust. A form of application will, upon request, be furnished by the said superintendent and should be filled out and executed in the presence of the field clerk or, in the office of the superintendent and duly attested by the field clerk or some other Government employee. The information required by the form of application and such other information as may be requested concerning the Indian and his affairs shall be carefully considered by the superintendent who will affix his recommendation to the application and forward it to the Secretary of the Interior with his report, which report shall contain full advice with respect to the education and business qualifications of the applicant, his ability to read, write and understand the English language, his reputation for industry and thrift and what experience, if any, he has had in a business way.

§116.2 Obligations of trust company.

The form of proposed trust agreement shall be executed by the trust company or banking institution selected as trustee, and shall be signed by and submitted with the application of the Indian, together with a statement in writing by said trust company or banking institution similar in form to that prescribed by the Comptroller of the Currency (or by the State banking department), showing fully the conditions of said trust company or banking institutions on a day not more than 1 month prior to the date of the application for the creation of the trust. The agreement must also be accompanied by a written certificate duly executed by the trustee to the effect that it has not paid or promised to pay any person other than an officer or employee on its regular payroll any fee, charge, commission or remuneration for any service or influence in securing or attempting to secure for it the trusteeship in that or in other trusts to which the regulations in this part apply.

§116.3 Secretarial approval discretionary.

No such trust agreement will be favorably considered unless in the judgment of the Secretary of the Interior the trustee therein named is deemed by him to be on a sound financial basis and otherwise sufficiently qualified to justify approval of such trust.

§ 116.4 Contents trust agreement.

In addition to the subject matter of the trust, its object and beneficiaries, duties of trustee, etc., the form of trust agreement shall contain provisions to the following general effect:

(a) That such of the current income from the corpus of the estate as may be payable to the Indians of the Five Civilized Tribes of one-half or more Indian blood shall be remitted by the trustee to the Secretary of the Interior or such other official as he may designate for appropriate disposition.

(b) That the trusts declared and each of them shall be irrevocable except with the approval of the Secretary of the Interior, but, subject to his approval, the beneficiaries named in any approved trust may be redesignated by the maker without in any manner otherwise impairing or altering any of the provisions thereof, particularly the duration of the trust or the compensation to be paid to the trustee.

(c) That neither the corpus of the trust estate nor the income derived therefrom is, during the restriction period provided by law, subject to alienation or incumbrance, or to the satisfaction of any debt or other liability of any beneficiary of such trust during the said restricted period.

(d) That if the trust be annulled, canceled or set aside by order of any court or otherwise, the principal of the trust with all accrued and unpaid interest shall be returned to the Secretary of the Interior as restricted individual property.

(e) That the trustee shall render an annual accounting to the Secretary of the Interior and to the beneficiary or beneficiaries to whom the income from any such trust for the preceding year or any part thereof was due and payable, such annual accounting to be submitted within 30 days following the ending of each annual period of the trust, and the trustee shall render accounting to the Secretary of the Interior at any other time on written request by the Secretary of the Interior, within 30 days from such request.

(f) That except as to U.S. Government bonds and other securities fully guaranteed by the Federal Government in which such funds in the hands of the trustee may be invested without limitations, the following limitations are prescribed on the right of the trustee to invest or reinvest any part of the corpus or income from the trust:

(1) Not more than 30 percent of the estate may be invested in securities exclusive of all other limitations contained in this part, which appear on the current list of legal investments for savings banks prepared by the superintendent of banks of the State of New York, except that this authorization shall not include the purchase of public utility securities or railroad securities which do not represent obligations of operating companies, or the purchase of stocks: *Provided, however,* That in the purchase of such securities not more than 20 percent may be invested in general obligations issued by States or by any political subdivisions thereof, and not more than 10 percent may be invested in public utilities and in railroad securities, or in either of them;

(2) Not more than 15 percent of the trust estate may be invested in Federal land bank bonds issued under the provisions of the act of July 17, 1916 (39 Stat. 360) as amended;

(3) Not more than 40 percent of the trust estate may be invested in total loans secured on first deeds of trust or first mortgages on improved city or farm real estate situated in the States designated in the trust agreements, but no such loans shall exceed 50 percent of the value of the real estate and improvements appraised not more than 30 days prior to such investments by one or more appraisers selected with the approval of the Secretary of the Interior;

(4) No part of the trust fund shall be invested in the purchase of real estate or stocks for the trust except to protect the trust estate in foreclosure or other proceedings;

(5) No part of the trust estate shall be invested in any kind of foreign securities, loans, or other properties, private or public.

§ 116.5 Eligibility of appraisers.

Hereafter no person who is interested directly or indirectly, whether through intimate personal, financial or business connections, in any trust company or banking institution designated as

trustee under an approved trust agreement involving restricted Indian property, or who is an officer, director, or employee of such trust company or banking institution, shall act as an appraiser of real estate in connection with the making of loans from the trust estate to be secured by first deeds of trust or first mortgages. Nor shall any person having an interest in obtaining such a loan, either personally or as an officer, director or employee of any company, association or partnership seeking such a loan, act as an appraiser. An investigation into the qualifications of all persons selected as appraisers will be made for the purpose of determining that the persons selected are both competent and disinterested.

§ 116.6 Aiding Indians in formulating trust agreements.

In the formulation of the trust agreement and the provisions thereof the superintendent for the Five Civilized Tribes Agency and the other employees under his supervision will upon request assist the Indian to the fullest possible extent to the end that he may understand fully the meaning and the intent of the agreement and make the most satisfactory provision for the formation and consummation of the trust agreement.

§ 116.7 Trust duration.

Under the terms of the statute no trust shall be established to continue for a period of more than 21 years after the death of the last surviving beneficiary named in the trust agreement.

§ 116.8 Trustee's security.

To secure the faithful performance of the duties imposed by the trust agreement the trustee shall, as required by section 7 of the act (47 Stat. 778), deposit securities of the United States or furnish an acceptable corporate surety bond in an amount equal to the value of the trust as fixed and determined by the Secretary of the Interior. Appraisers will be appointed by the Secretary for the purpose of fixing the value of the trust and of revising such value from time to time as the judgment of the Secretary may dictate. Additional or substitute security may be required at any time when deemed necessary for the protection of the trust estate and the interest of the Indians. Trustees pledging United States bonds or notes as security shall execute on forms[1] prescribed by the Secretary an appropriate resolution and power of attorney authorizing the sale, assignment or transfer of the collateral. Only those corporate sureties who hold certificates of authority from the Secretary of the Treasury to write bonds on which the United States is obligee are acceptable as sureties. The cost to the trustee, if any, of furnishing the required bond, will be regarded as a necessary part of the cost of administering the trust and as such deductible from the gross income accruing therefrom.

§ 116.9 Trustee's compensation.

As compensation for administering the trust the trustee will be permitted to receive annually not to exceed 5 percent of the gross annual income from such trust estate, and as further compensation will also be permitted to receive not to exceed an amount equal to 1 percent of the corpus of the trust estate, to be paid out of the income first accruing therefrom, and not to exceed an amount equal to 2 percent of the corpus of the estate at the time of final distribution based upon the last valuation made by the Secretary of the Interior prior to such distribution. By final distribution is meant any distribution to a beneficiary of any part of the corpus of the trust estate at any time under the terms of the trust. All fees are to be based on the size of the trust and the nature of the duties to be performed thereunder. The foregoing percentage of fees are maximum and alternative, that is, within such maximum limitations any one or more of said fees may or may not be allowed within the discretion of the Secretary of the Interior.

§ 116.10 Necessary forms.

In addition to the form of application by the Indians under the act of January 27, 1933 (47 Stat. 777), there are skeleton forms of trust agreement and

[1] Forms may be obtained from the superintendent of the Five Civilized Tribes Agency, Muskogee, Oklahoma.

bond which forms are subject to such changes as may be necessary to meet the requirements of each particular case.

§ 116.11 Limit restricted property in trust.

Not more than three million dollars aggregate value of restricted Indian property shall be placed in trust pursuant to the regulations in this part with any one trustee, trust company or other banking institution authorized by law to act as a fiduciary.

§ 116.12 Amendments.

The regulations in this part may be changed, amended, added to, and any part thereof eliminated at any time by the Secretary of the Interior.

PART 117—DEPOSIT AND EXPENDITURE OF INDIVIDUAL FUNDS OF MEMBERS OF THE OSAGE TRIBE OF INDIANS WHO DO NOT HAVE CERTIFICATES OF COMPETENCY

Sec.

117.1 Definitions.
117.2 Payment of taxes of adult Indians.
117.3 Payment of taxes of Indians under 21 years of age.
117.4 Disbursement of allowance funds.
117.5 Procedure for hearings to assume supervision of expenditure of allowance funds.
117.6 Allowance for minors.
117.7 Disbursement or expenditure of surplus funds.
117.8 Purchase of land.
117.9 Construction and repairs.
117.10 Purchase of automotive equipment.
117.11 Insurance.
117.12 Costs of recording and conveyancing.
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117.15 Collections from insurance companies.
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117.17 Inactive surplus funds accounts.
117.18 Withdrawal and payment of segregated trust funds.
117.19 Debts of Indians.
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117.21 Fees and expenses of attorneys.
117.22 Disbursements to legal guardians.
117.23 Transactions between guardian and ward.
117.24 Compensation for guardians and their attorneys.
117.25 Charges for services to Indians.
117.26 Expenses incurred pending qualification of an executor or administrator.
117.27 Custody of funds pending administration of estates.
117.28 Payment of claims against estates.
117.29 Sale of improvements.
117.30 Sale of personal property.
117.31 Removal of restrictions from personal property.
117.32 Funds of Indians of other tribes.
117.33 Signature of illiterates.
117.34 Financial status of Indians confidential.
117.35 Appeals.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10554, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 117.1 Definitions.

When used in the regulations in this part the following words or terms shall have the meaning shown below:

(a) ''Secretary'' means the Secretary of the Interior or his authorized representative.

(b) ''Commissioner'' means the Commissioner of Indian Affairs or his authorized representative.

(c) ''Superintendent'' means the superintendent of the Osage Agency.

(d) ''Quarterly payment'' means the payment of not to exceed $1,000 which is made each fiscal quarter to or on behalf of an adult Indian, from the following sources:

(1) The pro rata distribution of tribal mineral income and other tribal revenues.

(2) The interest on segregated trust funds.

(3) Surplus funds in addition to the income from the foregoing sources in the amount necessary to aggregate $1,000 when the income from those sources is less than $1,000 and the Indian has a balance of accumulated surplus funds in excess of $10,000.

(e) ''Surplus funds'' means all those moneys and securities readily convertible into cash, except allowance funds and segregated trust funds, which are held to the credit of an Indian at the Osage Agency and which may be disbursed, expended or invested only upon authorization by the Secretary. The term includes:

(1) That portion of the quarterly distribution of tribal income and interest

on segregated trust funds, in excess of $1,000, belonging to an adult Indian.

(2) The proceeds, including appreciation, of the sale or conversion of restricted real or personal property (other than partition sales).

(3) Payments made by insurance companies or others for loss or damage to restricted real or personal property.

(4) All moneys and securities, other than segregated trust funds, to the credit of an Indian who is less than 21 years of age (except the income from restricted lands payable as provided by §117.3).

(5) Funds and securities placed to the credit of an Indian upon the distribution of an Osage estate.

(f) ''Allowance funds'' means that income payable to or on behalf of a living adult Indian, the expenditure and disbursement of which is not subject to supervision unless authorized pursuant to the procedure contained in §117.5. The term includes:

(1) The quarterly payment in an amount not to exceed $1,000.

(2) The rentals and income from restricted lands owned by the Indian.

(3) The rentals and income from restricted lands owned by the minor children of the Indian, as provided in §117.3.

(4) Income from investments.

(5) Interest on deposits to the credit of the Indian.

(g) ''Segregated trust funds'' means those moneys held in the United States Treasury at interest to the credit of an Indian which represent pro rata shares of the segregation of tribal trust funds and the proceeds of the partition of restricted lands.

§117.2 Payment of taxes of adult Indians.

The superintendent may cause to be paid out of any money heretofore accrued or hereafter accruing to the credit of any adult Indian all taxes of every kind and character for which such Indian is or may be liable before paying to or for such person any funds as required by law. All checks in payment of taxes shall be made payable to the proper collector. For the purpose of establishing a fund with which to meet the payment of such taxes when due, the Superintendent may cause the funds of an adult Indian to be hypothecated in the following manner:

(a) For the payment of ad valorem taxes, one-fourth of the estimated amount ad valorem taxes from each quarterly payment unless this procedure would cause the obligation of more than 25 percent of such quarterly payments, in which event the necessary additional funds shall be retained from other allowance funds payable to such person under the law. If there be no other allowance funds available, or if the funds from these sources are insufficient, one-fourth of the estimated amount of such ad valorem taxes may be obligated from each quarterly payment. If an Indian who is liable for ad valorem taxes has no allowance funds, or such funds are insufficient for the payment thereof, surplus funds may be used for such payment.

(b)(1) For the payment of income taxes, one-half of the estimated amount of income taxes from each semi-annual payment of interest on deposits, but if such interest payments are insufficient to meet this obligation, additional funds shall be retained from interest on investments, rentals, or other allowance funds.

(2) Whenever funds are withheld for the purpose of establishing a fund to meet the payment of taxes, the Indian shall be notified of the action taken.

§117.3 Payment of taxes of Indians under 21 years of age.

All taxes assessed against the restricted lands of Indians less than 21 years of age shall be paid by the superintendent direct to the collector from the rents and income derived from such lands, and the balance, if any, of such rents and income shall be paid to the living parents or parent. If the parents are separated, the balance shall be paid to the parent having custody of the Indian under 21 years of age. All other taxes for which an Indian under 21 years of age may be liable shall be paid from his surplus funds.

§117.4 Disbursement of allowance funds.

Except as provided in §117.5, all allowance funds shall be disbursed to the Indian owner unless the Indian owner

directs otherwise in writing. At the request of the Indian owner, such funds may be retained by the superintendent as voluntary deposits subject to withdrawal or other disposition upon demand or direction of the Indian owner. The superintendent may recognize a power of attorney executed by the Indian and may disburse the allowance funds of the Indian in conformity therewith so long as the power of attorney remains in force and effect.

§ 117.5 Procedure for hearings to assume supervision of expenditure of allowance funds.

(a) Whenever the superintendent has reason to believe that an adult Indian is wasting or squandering his allowance funds the superintendent may cause an investigation and written report of the facts to be made. If the report indicates that the Indian is wasting or squandering his allowance funds the following notice shall be served upon the Indian, in person or by registered mail, and a copy thereof shall likewise be served upon his guardian if the Indian is under guardianship:

Section 1 of the act of February 27, 1925 (43 Stat. 1008) provides in part as follows:

''All payments to adults not having certificates of competency, including amounts paid for each minor, shall, in case the Secretary of the Interior finds that such adults are wasting or squandering said income, be subject to the supervision of the Superintendent of the Osage Agency: . . .''

Enclosed is a copy of a report which has been made to me concerning your handling and management of the income paid to you through the Osage Agency. This report indicates that you have been wasting and squandering your payments.

You are hereby notified that a hearing will be held in the Osage Indian Agency, Pawhuska, Oklahoma, at --- m., on the ----- day of ----------, 19---, before the Superintendent, for the purpose of taking testimony and evidence to be submitted to the Commissioner of Indian Affairs for his consideration in determining whether your payments shall be subject to the supervision of the Superintendent.

You are requested to be present at the hearing at the time and place designated above. You may introduce at the hearing such testimony and evidence as you deem appropriate to show that you are not wasting or squandering your payments and that your payments should continue to be made to you without supervision for your unrestricted use.

You are entitled to employ an attorney to assist you in this matter. Upon your request the employees of the Osage Agency will furnish you with any information you desire concerning your accounts at the Osage Agency or any of your transactions handled through the Osage Agency.

Date.

Superintendent.

(b) A hearing shall be held pursuant to the notice, the date of which shall be not less than 30 days after the date of the notice. For good cause shown to exist the superintendent may continue the hearing to a later date.

(c) A record of the proceedings, consisting of the superintendent's preliminary report, the notice and proof of service, all testimony and evidence introduced at the hearing, and all briefs and letters filed by the Indian or his attorney shall be submitted to the Commissioner, together with a recommendation from the superintendent.

(d) Upon a finding by the Commissioner that the Indian is wasting or squandering his income, his allowance funds shall thereafter be subject to the supervision of the superintendent. Notice of the decision of the Commissioner shall be furnished all interested parties.

§ 117.6 Allowance for minors.

The superintendent may disburse from the surplus funds of an Indian under 21 years of age not to exceed $300 quarterly for the support and maintenance of the minor. Disbursement may be made to the parent, guardian, or other person, school or institution having actual custody of the minor, or, when the minor is 18 years of age or over, disbursement may be made direct to the minor.

§ 117.7 Disbursement or expenditure of surplus funds.

Except as provided in the regulations in this part, no disbursement or expenditure of surplus funds of Indians shall be made without the consent of the Indian owner and until authorization has been obtained from the Commissioner. Application by an Indian or his legal guardian, or if he is a minor, by his parent or legal guardian, for the expenditure of surplus funds shall be presented to the Commissioner, fully

justified with the appropriate attachments such as court orders, decrees or other papers. Such application shall contain full information regarding the individual including his cash balance, the sum invested, the number of shares in the Osage mineral estate, total income from all sources including that paid on behalf of minors, the family status and the occupation or industry of the applicant. When request is made for payment to the individual without supervision, the record of said individual and his ability to handle such funds shall be shown.

§ 117.8 Purchase of land.

Upon written application of an adult Indian, the superintendent may disburse not to exceed $10,000 from the surplus funds of such Indian for the purchase of land, the title to which has been examined and accepted by the special attorney for the Osage Indians or other legal officer designated by the Commissioner. In all cases title must be taken by deed containing a clause restricting alienation or encumbrance without the consent of the Secretary of the Interior or his authorized representative.

§ 117.9 Construction and repairs.

Upon written application by an adult Indian, the superintendent may disburse not to exceed $1,000 during any one fiscal year from the surplus funds of such Indian to make repairs and improvements to restricted real property and in addition not to exceed $300 for new construction. When such expenditures are being made on property producing an income, reimbursement shall be required from such income unless otherwise directed by the Commissioner. When an Indian refuses to make application for funds to defray the cost of repairs necessary to preserve restricted property, the superintendent may, when authorized by the Commissioner, expend the surplus funds of the Indian for such repairs.

§ 117.10 Purchase of automotive equipment.

The superintendent may disburse from the surplus funds of an adult Indian not to exceed $2,000 for the purchase of automotive equipment when the Indian agrees in writing to carry property and liability insurance on the automotive equipment and to reimburse his surplus funds account from allowance funds within 24 months. No disbursement of surplus funds for the purchase of automotive equipment shall be made if the fulfillment of the reimbursable agreement will endanger the payment of taxes, insurance or other obligations, or result in the inability of the Indian to meet his current living expenses from allowance funds.

§ 117.11 Insurance.

The superintendent may obtain policies of insurance covering the restricted property, real or personal, of minor Indians and pay the premiums thereon from the funds of the minors. Upon application by an adult Indian the superintendent may procure insurance on any restricted property, real or personal, owned by the applicant and pay the necessary premiums from his surplus or allowance funds. When authorized by the Commissioner, the superintendent may also procure insurance on restricted property, real or personal, of any adult Indian who neglects or refuses to take out such insurance.

§ 117.12 Costs of recording and conveyancing.

The superintendent may expend the surplus funds of an Indian to make direct payment of recording fees and costs, of conveyancing, including abstracting costs, which are properly payable by the Indian.

§ 117.13 Telephone and telegraph messages.

The superintendent may expend the surplus funds of an Indian to make direct payment for telephone and telegraph messages sent by the agency or received at the agency at the instance of the Indian or his guardian or attorney.

§ 117.14 Miscellaneous expenditure of surplus funds.

Upon application by an adult Indian the superintendent may disburse the surplus funds of such Indian for the following purposes:

(a) Medical, dental, and hospital expenses for the applicant or a member of his family, not to exceed one thousand dollars ($1,000) during any one fiscal year.

(b) Funeral expenses, including the funeral feast, of a deceased member of his family, in an amount not to exceed one thousand dollars ($1,000).

(c) A tombstone or monument to mark the grave of a deceased member of his family in amount not to exceed five hundred dollars ($500).

(d) Court costs in any judicial proceeding to which the applicant is a party.

(e) Bond premiums, except bail and supersedeas bonds.

(f) For miscellaneous purposes, not to exceed five hundred dollars ($500) during any one fiscal year.

§ 117.15 Collections from insurance companies.

Moneys collected from insurance companies for loss or damage to restricted real or personal property shall be deposited to the credit of the Indian owner as surplus funds. Moneys so deposited to the credit of an adult Indian may, upon the written application of the Indian, be disbursed by the superintendent for the purpose of repairing or replacing the property. Moneys collected from insurance companies for loss or damage to unrestricted real or personal property shall be paid to the Indian for his unrestricted use.

§ 117.16 Reimbursement to surplus funds.

When expenditures have been made from surplus funds upon the condition, and with the written agreement of the Indian, that reimbursement or repayment shall be made from future allowance funds, the superintendent is authorized to withhold from succeeding quarterly payments or other allowance funds such amounts as may be necessary to effect reimbursement within a period not exceeding 24 months from date of the first expenditure under the given authority.

§ 117.17 Inactive surplus funds accounts.

When the balance of surplus funds to the credit of an adult Indian is less than $300 and when there is no likelihood of its increase within 90 days, the superintendent may disburse the entire balance to the Indian owner for his unrestricted use.

§ 117.18 Withdrawal and payment of segregated trust funds.

The withdrawal and payment of segregated trust funds will be made only upon application and satisfactory evidence that the withdrawal and payment of such funds would be to the best interest of the Indian in view of all the circumstances shown to exist. The segregated trust funds of an Indian under guardianship or an Indian under 21 years of age shall not be released and paid except to a guardian appointed by a proper court and after the filing of a bond approved by the court conditioned upon the faithful handling of the funds. Applications for the withdrawal and payment of segregated trust funds must be made upon the forms prescribed by the Secretary for that purpose.

§ 117.19 Debts of Indians.

No indebtedness of Indians will be paid from their funds under the control or supervision of the Secretary unless authorized in writing and obligated against their accounts by the superintendent or some other designated employee except in cases of emergency involving the protection or preservation of life or property, which emergency must be clearly shown. With this exception, no authorization or obligation against the account of any Indian for indebtedness incurred by him shall be made by the superintendent unless specifically authorized by the regulations in this part.

§ 117.20 Purchase orders.

Purchase orders may be issued by the superintendent for expenditures authorized by the regulations in this part or for expenditures specifically authorized by the Commissioner. When necessary to prevent hardship or suffering, purchase orders may be issued by the superintendent against the future income of an Indian in an amount not to exceed 80 percent of the anticipated quarterly payment. The payment of purchase orders issued against future

income shall be contingent upon the availability of funds.

§ 117.21 Fees and expenses of attorneys.

When payment of an attorney fee for services to an Indian is to be made from his surplus funds, the employment of the attorney by the Indian must be approved in advance. All fees will be determined on a quantum merit basis and paid upon completion of the services. The superintendent may approve the employment of an attorney, determine the fee, and disburse the surplus funds of the Indian in payment thereof when the fee does not exceed $500. Upon application by the Indian and upon the presentation of properly authenticated vouchers, the superintendent may disburse the surplus funds of the Indian in an amount not to exceed $200 in payment of necessary expenses incurred by the attorney.

§ 117.22 Disbursements to legal guardians.

Any disbursement authorized to be made to an Indian by the regulations of this part may, when the Indian is under guardianship, be made by the superintendent to the guardian. All expenditures by a guardian of the funds of his ward must be approved in writing by the court and the superintendent.

§ 117.23 Transactions between guardian and ward.

Business dealings between the guardian and his ward involving the sale or purchase of any property, real or personal, by the guardian to or from the ward, or to or from any store, company or organization in which the guardian has a direct interest or concern or contrary to the policy of the Department and shall not be approved by the superintendent without specific authority from the Commissioner.

§ 117.24 Compensation for guardians and their attorneys.

(a) The superintendent may approve compensation for services rendered by the guardian of an Indian on an annual basis, the amount of the compensation to be determined by application of the following schedule to the moneys collected by the guardian:

First $1,000 or portion thereof, not to exceed 10 percent.

Second $1,000 or portion thereof, not to exceed 9 percent.

Third $1,000 or portion thereof, not to exceed 8 percent.

Fourth $1,000 or portion thereof, not to exceed 7 percent.

Fifth $1,000 or portion thereof, not to exceed 6 percent.

Sixth $1,000 or portion thereof, not to exceed 5 percent.

Seventh $1,000 or portion thereof, not to exceed 4 percent.

Eighth $1,000 or portion thereof, not to exceed 3 percent.

Ninth $1,000 or portion thereof, not to exceed 2 percent.

All above $9,000 not to exceed 1 percent.

(b) Balance carried forward from previous reports and moneys received by a guardian or his attorney as compensation shall be excluded in determining the compensation of the guardian or his attorney.

(c) The attorney for a guardian shall be allowed compensation in an amount equal to one-half of the amount allowed the guardian under the foregoing schedule except when such attorney is himself the guardian and acting as his own attorney, in which event he shall be allowed a fee of not to exceed one-fourth of the amount allowed the guardian under the foregoing schedule in addition to the fee as guardian.

(d) The superintendent may in his discretion permit the guardian to collect rentals from restricted city or town properties belonging to his ward.

§ 117.25 Charges for services to Indians.

The superintendent shall make the following charges for services to Indians: Five per cent of all interest and non-liquidating dividends received from all types of securities, including stocks, bonds, and mortgages held in trust for individual Indians and interest on group investments. Such fees shall be deposited in the Treasury of the United States to the credit of the fund ''Proceeds of Oil and Gas Leases, Royalties, etc., Osage Reservation, Oklahoma''.

§ 117.26 Expenses incurred pending qualification of an executor or administrator.

Pending the qualification of the executor or administrator of the estate of a deceased Indian of one-half or more Indian blood who did not have a certificate of competency at the time of his death, the superintendent may authorize the extension of credit for the following purposes, subject to allowance of claims by the executor or administrator and approval thereof by the court:

(a) Funeral expenses, including the cost of a funeral feast, in an amount not to exceed $1,000.

(b) Necessary expenses in hearings before the Osage Agency involving the approval or disapproval of last wills and testaments.

(c) Expenses necessary to preserve restricted property.

§ 117.27 Custody of funds pending administration of estates.

(a) *Estates of Indians of less than one-half Indian blood and estates of Indians who had certificates of competency.* Upon the death of an Indian of less than one-half Indian blood or an Indian who had a certificate of competency, the superintendent shall pay to the executor or administrator of the estate all moneys and securities, other than segregated trust funds to the credit of the Indian and all funds which accrue pending administration of the estate.

(b) *Estates of Indians of one-half or more Indian blood who did not have certificates of competency.* Upon the death of an Indian of one-half or more Indian blood who did not have a certificate of competency at the time of his death, the following classes of funds, less any amount hypothecated for the payment of taxes as provided in § 117.2 shall be paid by the superintendent to the executor or administrator of the estate:

(1) Allowance funds to the credit of the Indian.

(2) Any quarterly payment authorized prior to the death of the Indian.

(3) Interest on segregated trust funds and deposits computed to the date of death.

(4) Rentals and income from restricted lands collected after the death of the Indian which were due and payable to the Indian prior to his death.

Except as provided in § 117.28, the superintendent shall not pay to the executor or administrator any surplus funds to the credit of the Indian or any funds, other than those listed in paragraphs (b) (1), (2), (3) and (4) of this section which accrue pending administration of the estate.

§ 117.28 Payment of claims against estates.

The superintendent may disburse to the executor or administrator of the estate of a deceased Indian of one-half or more Indian blood who did not have a certificate of competency at the time of his death sufficient funds out of the estate to pay the following classes of claims approved by the court:

(a) Debts authorized by the superintendent during the lifetime of the Indian.

(b) Expenses incurred pending the qualifications of an executor or administrator under authority contained in § 117.26.

(c) Expenses of administration, including court costs, premium on bond of executor or administrator, transcript fees and appraiser fees.

(d) Living expenses incurred within 90 days immediately preceding the date of death of the Indian.

(e) Allowance for reasonable living expenses each month for 12 months to a surviving spouse who is entitled to participate in the distribution of the estate and who is in need of such support.

(f) Allowance for reasonable living expenses each month for 12 months for each child of the decedent under 21 years of age who is entitled to participate in the distribution of the estate and who is in need of such support.

(g) Insurance premiums and license fees on restricted property.

(h) Not to exceed $1,000 for the preservation and upkeep of restricted property including the services of a caretaker when necessary.

(i) Debts incurred during the lifetime of the Indian but not authorized by the superintendent, if found by the Commissioner to be just and payable. The superintendent shall disburse no funds to an executor or administrator for the

payment of the foregoing classes of claims unless the executor or administrator has no other funds in his hands available for the payment of such claims.

[22 FR 10554, Dec. 24, 1957, as amended at 35 FR 10005, June 18, 1970. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 117.29 Sale of improvements.

The superintendent may approve the sale of improvements on restricted Indian lands when such improvements are appraised at not more than $500 and when the owner has submitted a written request that the sale be made and a statement that the improvements can no longer be used by him. The proceeds of all such sales shall be deposited to the credit of the Indian as surplus funds. Improvements consisting of buildings, etc., located on property within the Osage villages of Pawhuska, Hominy, and Grayhorse may, upon approval of the superintendent, be disposed of to other Osage Indians. The superintendent may disburse the surplus funds of the purchaser to consummate the transaction. Sale of such improvements to non-Indian or non-Osage Indians must be approved by the Commissioner.

§ 117.30 Sale of personal property.

The superintendent may approve the sale of restricted personal property other than livestock. The superintendent may also approve the sale of livestock when authorized so to do by special or general instructions from the Commissioner. The proceeds from the sale of personal property other than livestock shall be deposited to the credit of the Indian as surplus funds unless the surplus funds from which said property was purchased have been reimbursed from allowance funds, in which case the proceeds from such sale shall be disbursed as allowance funds. If partial reimbursement only has been made, such portion of the proceeds of sale as may be necessary to complete the reimbursable agreement shall be deposited to the credit of the Indian as surplus funds and the balance, if any, shall be disbursed as allowance funds. The proceeds from the sale of livestock shall be deposited in conformity with general or specific instructions from the Commissioner.

§ 117.31 Removal of restrictions from personal property.

The superintendent may relinquish title to personal property (other than livestock) held by the United States in trust for the Indian when to do so will enable the Indian to use the property as part payment in the purchase of other personal property and when the remainder of the purchase price is to be made from other than surplus funds of the Indian.

§ 117.32 Funds of Indians of other tribes.

The funds of restricted non-Osage Indians, both adults and minors, residing within the jurisdiction of the Osage Agency, derived from sources within the Osage Nation and collected through the Osage Agency, may be disbursed by the superintendent, subject to the condition that all payments to third persons, including taxes and insurance premiums, shall be made upon the written authorization of the individual whose funds are involved, if an adult, and upon the written authorization of the parent or guardian, if a minor. The funds of restricted non-Osage Indians who do not reside within the jurisdiction of the Osage Agency shall be transferred to the superintendent of the jurisdiction within which the Indian resides, to be disbursed under regulations of the receiving agency.

§ 117.33 Signature of illiterates.

An Indian who cannot write shall be required to endorse checks payable to his order and sign receipts or other documents by making an imprint of the ball of the right thumb (or the left, if he has lost his right) after his name. This imprint shall be clear and distinct, showing the central whorl and striations and witnessed by two reputable persons whose addresses shall be given opposite or following their names. An Indian may sign by marking ''X'' before two witnesses where he is unable to attach his thumb mark for physical reasons.

§ 117.34 Financial status of Indians confidential.

The financial status of Indians shall be regarded as confidential and shall not be disclosed except to the owner of the account or his authorized agent, unless authorized in advance by the Commissioner.

§ 117.35 Appeals.

Any decision by the superintendent may be appealed to the area director, any decision by the area director may be appealed to the Commissioner, and any decision by the Commissioner may be appealed to the Secretary.

PART 121—DISTRIBUTION OF JUDGMENT FUNDS AWARDED TO THE OSAGE TRIBE OF INDIANS IN OKLAHOMA

Sec.

121.1 Definitions.
121.2 Purpose.
121.3 Notice of time limit and place for filing claims.
121.4 Issuance of Orders of Distribution.
121.5 Segregation of per capita shares.
121.6 Distribution of share of deceased allottee.
121.7 Notice of orders to claimants and distributees.
121.8 Appeal from an Order of Distribution.
121.9 Disbursement of distributed shares.
121.10 Miscellaneous provisions.

AUTHORITY: 5 U.S.C. 301; 86 Stat. 1295.

SOURCE: 38 FR 9163, Apr. 11, 1973, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 121.1 Definitions.

(a) ''Act'' means the act of October 27, 1972 (86 Stat. 1295).

(b) ''Allottee'' means a person whose name appears on the roll of the Osage Tribe of Indians approved by the Secretary of the Interior on April 11, 1908, pursuant to the act of June 28, 1906 (34 Stat. 539).

(c) ''Regional Solicitor, Tulsa'' means the Regional Solicitor for the Tulsa Region of the Office of the Solicitor, U.S. Department of the Interior, P.O. Box 3156, Tulsa, Oklahoma 74101.

(d) ''Distributee'' means one to whom a distribution is ordered pursuant to the regulations in this part.

(e) ''Secretary'' means the Secretary of the Interior or his authorized representative.

(f) ''Superintendent'' means the Superintendent, Osage Agency, Bureau of Indian Affairs, Pawhuska, Oklahoma 74056.

[38 FR 9163, Apr. 11, 1973, as amended at 39 FR 41707, Dec. 2, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 121.2 Purpose.

The regulations in this part govern the distribution, pursuant to the act, of judgment funds awarded to the Osage Tribe of Indians of Oklahoma. All funds appropriated by the act of January 8, 1971 (84 Stat. 1981), in satisfaction of a judgment in the Indian Claims Commission against the United States in dockets numbered 105, 106, 107, and 108, together with interest thereon, are to be distributed, except the sum of $1 million and any funds that revert to the Osage Tribe and except the amount allowed for attorney fees and expenses and the cost of distribution.

§ 121.3 Notice of time limit and place for filing claims.

The act provides for distribution of funds to allottees and heirs of Osage Indian blood of deceased allottees.

(a) All claims for per capita shares by heirs of Osage Indian blood shall be filed with the Superintendent, Osage Agency, Bureau of Indian Affairs, Pawhuska, Okla. 74056, not later than April 27, 1974. An individual who claims as an heir of Osage Indian blood should make a timely filing of a claim which identifies, by name and allotment number, each allottee in whose share the individual claims an interest, in order that the Superintendent may notify the individual when the order of distribution for each such allottee is made. Failure to file a claim in this manner may prevent an individual from receiving notice of distribution in an instance in which he is an interested party. Failure of an heir of Osage Indian blood to file a claim will not necessarily prevent the distribution to such heir of the portion of the allottee's share due that heir if sufficient evidence to support such distribution is available to the Superintendent.

However, no heir who fails to file a claim within the prescribed period (on or before April 27, 1974) shall after that period have any right to any distribution other than that ordered by the Superintendent based on evidence available to the Superintendent during that period. Unclaimed shares of distributees are required by statute to revert to the Osage Tribe 6 months after determination of their right to share.

(b) Distribution of a living allottee's own share will be made without the filing of a claim.

§121.4 Issuance of Orders of Distribution.

The Superintendent, Osage Agency, Bureau of Indian Affairs, Pawhuska, Okla. 74056, is authorized to issue the Orders of Distribution in accordance with the act and the regulations in this part. The Superintendent's decisions thereon shall be final unless a timely appeal therefrom is filed in accordance with §121.8.

§121.5 Segregation of per capita shares.

The Superintendent shall segregate one per capita share for each allottee for distribution as follows:

(a) One share for distribution to each such allottee who is living on the date the Order for Distribution for that share is issued; and

(b) One share for distribution to the heir or heirs of Osage Indian blood of each allottee who is deceased on the date the Order of Distribution for that share is issued, to be divided among such heirs in such proportions as shall be computed in accordance with §121.6.

§121.6 Distribution of share of deceased allottee.

The Superintendent shall issue an Order of Distribution which, except as otherwise provided in this §121.6, divides the share of a deceased allottee leaving heirs of Osage Indian blood in such proportions as the allottee's heirs of Osage Indian blood would have shared in the estate of the allottee if the allottee had died intestate leaving one or more individuals of Osage Indian blood as the allottee's only heirs at law under the Oklahoma law of intestate succession. In preparing such an order, the Superintendent shall accept as accurate any unambiguous determination of heirship, of an allottee or of the heir of an allottee, either made by the Secretary prior to April 18, 1912, or contained in a final order of an Oklahoma court after that date. When no such unambiguous determination is available, such order shall be based upon all other pertinent heirship evidence available to the Superintendent. When one or more of the immediate heirs of Osage Indian blood of an allottee is deceased, the heirs of Osage Indian blood of such deceased heirs shall be ascertained, successively among all remote heirs of Osage Indian blood of the allottee, in the sequence in which the deaths of the heirs occurred until the identities of all living remote heirs of Osage Indian blood, and the respective proportions of the share to which they are entitled, have been ascertained. To qualify for distribution as an heir, it must be established that the distributee and each heir of the allottee through whom the claim is traced had Osage Indian blood acquired either from an allottee or from a common ancestor of an allottee and the distributee.

§121.7 Notice of orders to claimants and distributees.

Notice of an Order of Distribution shall be mailed, on the date of issuance of such order, to the allottee whose share is being distributed if living, but if not living, to (a) each distributee named therein, (b) each claimant whose claim asserts entitlement to a portion of the allottee's share, and (c) each person who had not filed a claim on the date of issuance of such order but is in that order determined by the Superintendent to be ineligible to receive a portion of the allottee's share. Such notice shall be accompanied by a copy of the Order of Distribution and shall contain instructions for filing an appeal in accordance with paragraphs (a) or (b) and (c) of §121.8.

§121.8 Appeal from an Order of Distribution.

(a) An Order of Distribution of the share of an allottee living on the date the order is issued shall become final 3 days from the date thereof unless an

appeal is filed by an interested party with the Superintendent before the expiration of those 3 days.

(b) An Order of Distribution of the share of an allottee who is deceased on the date the order is issued shall become final 30 days from the date thereof unless an appeal is filed by an interested party with the Superintendent before the expiration of those 30 days.

(c) Each appeal must contain a statement of the reasons that the appellant considers the Order of Distribution to be subject to error, and each appellant must, at the time of filing his appeal, mail a copy thereof to each person named as a distributee in the Order of Distribution. The Superintendent shall furnish a copy of the appeal to each other interested party to whom a copy of the Order of Distribution was mailed.

(d) The Regional Solicitor, Tulsa, is authorized to determine appeals from Orders of Distribution in accordance with the act and the regulations in this part. The Regional Solicitor's decision thereon shall be final on the date of the issuance of his decision and shall constitute the final action of the Department of the Interior in connection with such appeal.

(e) The Superintendent may, in his discretion for good cause shown, order partial distribution of any undisputed segment of any share for which an appeal is pending when such distribution will not be affected by the appeal decision on the disputed portion of the share.

[38 FR 9163, Apr. 11, 1973, as amended at 39 FR 41707, Dec. 2, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 121.9 Disbursement of distributed shares.

When an Order of Distribution, either as issued or as amended by decision on appeal, has become final, the Superintendent shall either disburse to distributees the amounts distributed to them or deposit such amounts to appropriate accounts, in accordance with the following guidelines:

(a) When the amount distributed to any heir is less than $20, the amount shall be segregated in a special account for that heir until all Orders of Distribution have become final, at which time the sum of all amounts thus segregated to such account shall be disbursed or redeposited as provided in paragraphs (b), (c), (d) and (e) of this section, if such sum equals or exceeds $20. When such sum is less than $20, such sum in each of such accounts, and all unclaimed shares, and all amounts awarded to distributees which remain unclaimed for 6 months after the Order of Distribution has become final, shall, subsequent to April 27, 1974, be deposited to the account of the Osage Tribe as sums which have reverted to it.

(b) Living allottees having certificates of competency shall have their distributions disbursed directly to them.

(c) Living allottees not having certificates of competency shall have their distributions deposited to their accounts, subject to withdrawal by them at their request.

(d) Heirs of Osage Indian blood who are at least 18 years of age and are not under guardianship shall have their distributions disbursed directly to them.

(e) Heirs of Osage Indian blood who are under guardianship shall have their distributions deposited to their accounts, subject to disbursement to the distributees or their guardians or other persons on their behalf on such terms and conditions as the Superintendent shall consider to be in their best interests during their legal disability, after which the remaining portion shall be disbursed to such distributees.

(f) Heirs of Osage Indian blood who are under 18 years of age shall have their distributions deposited to their accounts, with the funds represented by such deposits invested at favorable rates of return for prudent investments, to be disbursed with earnings thereon only when the respective distributees for whom they are held shall attain the age of 18 years.

§ 121.10 Miscellaneous provisions.

(a) Powers of attorney, assignments, and orders given to another person by anyone entitled to share in the payment will not be recognized.

(b) None of the funds distributed are subject to Federal or State income taxes.

(c) Claimants are hereby notified that criminal penalties are provided by statute (18 U.S.C. 1001) for knowingly filing fraudulent information.

PART 122—MANAGEMENT OF OSAGE JUDGMENT FUNDS FOR EDUCATION

Sec.
122.1 Purpose and scope.
122.2 Definitions.
122.3 Information collection.
122.4 Establishment of the Osage Tribal Education Committee.
122.5 Selection/nomination process for committee members.
122.6 Duties of the Osage Tribal Education Committee.
122.7 Budget.
122.8 Administrative costs for management of the fund.
122.9 Annual report.
122.10 Appeal.
122.11 Applicability.

AUTHORITY: 86 Stat. 1295, 98 Stat. 3103 (25 U.S.C. 331 note).

SOURCE: 54 FR 34155, Aug. 18, 1989, unless otherwise noted.

§122.1 Purpose and scope.

(a) The purpose of this part is to set forth procedures and guidelines to govern the use of authorized funds in education programs for the benefit of Osage Tribal members, along with application requirements and procedures used by those eligible persons.

(b) The Osage Tribe by act of Congress, October 27, 1972 (25 U.S.C. 883, 86 Stat. 12950, as amended by Pub. L. 98–605) on October 30, 1984, provides that $1 million, together with other funds which revert to the Osage Tribe, may be advanced, expended, invested, or reinvested for the purpose of financing an education program of benefit to the Osage Tribe of Indians of Oklahoma, with said program to be administered as authorized by the Secretary of the Interior.

§122.2 Definitions.

Act means Osage Tribe by Act of Congress, October 27, 1972 (25 U.S.C. 883, 86 Stat. 1295), as amended by Pub. L. 98–605.

Allottee means a person whose name appears on the roll of Osage Tribe of Indians approved by the Secretary of the Interior on April 11, 1908, pursuant to the Act of June 28, 1906 (34 Stat. 539).

Assistant Secretary means the Assistant Secretary—Indian Affairs.

Osage Tribal Education Committee means the committee selected to administer the provisions of this part as specified by §122.6.

Reverted funds means the unpaid portions of the per capita distribution fund, as provided by the Act, which were not distributed because the funds were:

(1) Unclaimed within the period specified by the Act; or

(2) For an amount totaling less than $20 due an individual from one or more shares of one or more Osage allottees.

Secretary means the Secretary of the Department of the Interior or his/her authorized representative.

§122.3 Information collection.

(a) The information collection requirements contained in §§122.6 and 122.9 have been approved by the Office of Management and Budget under U.S.C. 3501 *et seq.* and assigned clearance numbers 1076–0098 and 1076–0106, respectively. The information collected in §122.6 is used to determine the eligibility of Osage Indian student applicants for educational assistance grants. The information collected in §122.9 provides summary review for program evaluation and program planning. Response to the information collections is required to obtain a benefit in accordance with 25 U.S.C. 883.

(b) Public reporting burden for this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337 SIB, 18th & C Streets, NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1076–0106), Washington DC 20503.

§ 122.4 Establishment of the Osage Tribal Education Committee.

(a) The Osage Tribe, to maintain its right of Tribal autonomy, shall, at the direction of the Bureau of Indian Affairs, establish the Osage Tribal Education Committee (OTEC) to fulfill the responsibilities and provisions of this part as set out in § 122.6.

(b) This committee shall be composed of seven (7) members. Five (5) of the members shall be of Osage blood or descendents of Osage, and two (2) from the education staff of the Bureau of Indian Affairs.

(1) Of the five Osage members, at least three shall be legal residents and/or live within a 20-mile radius of one of the three Osage Indian villages. Of these, at least one member shall reside within the specified radius of the Pawhuska Indian village; at least one member shall reside within the specified radius of the Hominy Indian village; and at least one member shall reside within the specified radius of the Greyhorse Indian village.

(2) The two remaining Osage committee members will be members at large.

§ 122.5 Selection/nomination process for committee members.

(a) Selection of the five (5) OTEC members shall be made by the Assistant Secretary in accordance with the following:

(1) Any adult person of Osage Indian blood who is an allottee or a descendant of an allottee is eligible to serve on the Osage Tribal Education Committee.

(2) Nominees for committee membership shall include a brief statement of interest and qualifications for serving on the committee.

(b) Nominations may be made by any Osage organization, including the Osage village communities of Greyhorse, Hominy and Pawhuska, by requesting its candidates to follow procedures outlined in paragraph (a)(2) of this section.

(c) Nominations shall be delivered by registered mail to the following address: Osage Tribal Education Committee, c/o Area Education Programs Administrator, Bureau of Indian Affairs, Muskogee Area Office—Room 152, 5th & W, Okmulgee, Muskogee, Oklahoma 74401.

(d) A Nominee Selection Committee composed of OTEC members so designated by the Assistant Secretary will review all nominations. Upon completion of this process, the Nominee Selection Committee will forward its recommendations for final consideration to the Assistant Secretary.

(e) Each member shall be sworn in for a four year term. At the discretion of the Assistant Secretary, members may succeed themselves with a recommendation for reappointment from the Nominee Selection Committee.

(f) The Assistant Secretary may, until a vacancy is filled, appoint an individual to serve for a temporary period not to exceed 120 days.

§ 122.6 Duties of the Osage Tribal Education Committee.

(a) For the purpose of providing financial assistance to eligible Osage applicants for educational assistance, the Osage Tribal Education Committee shall maintain an office and retain all official records at the Bureau of Indian Affairs offices located at the Federal Building, Muskogee, Oklahoma.

(b) The Osage Tribal Education Committee shall be responsible for implementing an overall plan of operation consistent with the policy of Indian self-determination which incorporates a systematic sequential process whereby all student applications for financial aid are rated and ranked simultaneously to enable a fair distribution of available funds.

(1) All applicants shall be rated by a point system appropriate to applications for education assistance. After all applications are rated, the Osage Tribal Education Committee will rank the applications in a descending order for award purposes. No awards shall be made until all applications are rated against the point system.

(2) Monetary awards shall be for fixed amounts as determined by the Osage Tribal Education Committee. The fixed amounts shall be itemized in the committee's annual budgetary request, and the monetary award amounts shall be consistent with the fixed amounts itemized in the approved budget.

(3) Payment of the monetary awards shall be made directly to the student, with half of the amount payable on or before September 15 and the second half payable on or before February 15, provided the student is successfully enrolled in an accredited institution of higher education and meeting the institution's requirement for passing work.

(4) No student will be funded beyond 10 semesters or five academic years, not to include summer sessions, nor shall any student with a baccalaureate degree be funded for an additional undergraduate degree.

§ 122.7 Budget.

(a) By August 1 of each year, the Osage Tribal Education Committee will submit a proposed budget to the Assistant Secretary or to his/her designated representative for formal approval. Unless the Assistant Secretary or his/her designated representative informs the committee in writing of budget restrictions by September 1, the proposed budget is considered to be accepted.

(b) The investment principal, composed of the one million dollars appropriated by the Act and reverted funds, must be invested in a federally insured banking or savings institution or invested in obligations of the Federal Government. There are no provisions in this part which shall limit the right of the Osage Tribal Education Committee to withdraw interest earned from the investment principal; however, expenditures shall be made against only the interest generated from investment principal and reverted funds.

(c) All funds deposited will accumulate interest at a rate not less than that generally available for similar funds deposited at the same banking or savings institution or invested in the same obligations of the United States Government for the same period of time.

§ 122.8 Administrative costs for management of the fund.

Funds available for expenditures may be used by the Osage Tribal Education Committee in the performance of its duties and responsibilities. Recordkeeping is required and proposed expenditures are to be attached with the August 1 proposed annual budget to the Assistant Secretary or his/her designated representative.

§ 122.9 Annual report.

The Osage Tribal Education Committee shall submit an annual report on OMB approved Form 1076–0106, Higher Education Annual Report, to the Assistant Secretary or his/her designated representative on or before November 1, for the preceding 12 month period.

§ 122.10 Appeal.

The procedure for appealing any decision regarding the awarding of funds under this part shall be made in accordance with 25 CFR part 2, Appeals from Administrative Action.

§ 122.11 Applicability.

These regulations shall cease upon determination of the legal and appropriate body to administer the fund and upon the establishment of succeeding regulations.

PART 123—ALASKA NATIVE FUND

Sec.

123.1 Scope and purpose.
123.2 Definitions.
123.3 Payment of shares of the Fund in the absence of recognition of an assignment.
123.4 Recognition of assignments.
123.5 Register of recognized assignments.
123.6 Sub-assignment.
123.7 Multiple assignments.
123.8 Disclaimer.
123.9 Cancellation of assignments.
123.10 Decision; finality.

AUTHORITY: Secs. 25 and 31, Pub. L. 92–203, 85 Stat. 715, as amended by Pub. L. 95–178, 91 Stat. 1370 (43 U.S.C. 1624, 1628).

SOURCE: 43 FR 20003, May 10, 1978, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 123.1 Scope and purpose.

(a) The regulations in this part shall apply to all future distributions of the Alaska Native Fund pursuant to section 6 of the Alaska Native Claims Settlement Act (43 U.S.C. 1605), except money reserved for the payment of attorney and other fees as provided in section 20 of the Act (43 U.S.C. 1619).

(b) These regulations are not intended (1) to alter the distribution formula of section 6 of the Act (43 U.S.C. 1605), or the redistribution formulas of section 7(j) or 7(m) of the Act (43 U.S.C. 1606(j), (m)); or (2) to require the distribution of money in the Fund when not authorized by the Act, or when the money has been set aside in an escrow or reserved account pursuant to an order of a court of competent jurisdiction.

(c) The regulations in this part are intended to implement section 31 of the Act (43 U.S.C. 1628) which authorizes the Secretary to recognize validly executed assignments of a Regional Corporation's rights to receive payments from the Fund.

§ 123.2 Definitions.

As used in the regulations in this part:

Act means the Alaska Native claims Settlement Act, as amended (Pub. L. 92–203, 85 Stat. 715, 43 U.S.C. 1601 et seq.; Pub. L. 95–178, 91 Stat. 1370).

Assignee means the person or entity receiving from a Regional Corporation an assignment of certain of the corporation's future interests in the Fund.

Assignor means a Regional Corporation which has assigned to another certain of its future interests in the Fund.

Assistant Secretary means the Assistant Secretary for Indian Affairs, U.S. Department of the Interior, or his authorized representative.

Fund means the Alaska Native Fund created by section 6 of the Act (43 U.S.C. 1605).

Payee means the recipient of a distribution from the Fund. The payee must be a financial corporation such as a bank, credit union, or savings and loan association which is insured under the Federal Deposit Insurance Corporation, the National Credit Union Administration, or the Federal Savings and Loan Insurance Corporation, respectively. The payee must be capable of receiving payment through the U.S. Treasury's Financial Communication System.

Regional Corporation means an Alaska Native Regional Corporation established under the laws of the State of Alaska in accordance with the provisions of the Act.

Secretary means the Secretary of the Interior.

§ 123.3 Payment of shares of the Fund in the absence of recognition of an assignment.

(a) All money in the Fund shall be distributed by the Assistant Secretary at the end of each three months of the fiscal year among the Regional Corporations on the basis of the relative numbers of Natives enrolled in each region.

(b) Except as otherwise authorized in the regulations in this part, a Regional Corporation's quarterly share of the Fund shall be made payable to the Regional Corporation through a payee designated by the Regional Corporation.

(c) A Regional Corporation may designate a payee of its quarterly share at any time, and may change that designation at any time, *Provided,* That the Assistant Secretary receive written notification of any such designation or change in designation at least ten (10) days before the quarterly distribution date. Any such designation must include the name and address of the payee and the identifying American Banking Association number.

§ 123.4 Recognition of assignments.

(a) Upon application of a Regional Corporation, as provided in paragraph (c) of this section, the Assistant Secretary shall recognize a validly executed assignment of that portion of a furture interest in the Fund not subject to the redistribution provisions of sections 7(j) and 7(m) of the Act. A future interest which is not subject to those redistribution provisions shall be referred to in this section as an ''assignable future interest'' or the ''assignable portion of a quarterly distribution.''

(b) Such assignments shall only be recognized to the extent that the Regional Corporation involved is not required to distribute funds pursuant to subsection (j) or (m) of section 7 of the Act.

(c) Upon recognition of such an assignment, the Assistant Secretary shall distribute the amount assigned to the payee designated by the parties to the assignment, and shall continue to

pay the amount assigned to that payee, except as provided by §§123.6(b) and 123.9.

(d) A Regional Corporation's application for recognition of an assignment of a future interest in the Fund:

(1) Shall be addressed to the Assistant Secretary for Indian Affairs, Attn.: Assistant Director, Financial Management, Bureau of Indian Affairs, U.S. Department of the Interior, Washington, D.C. 20240;

(2) Shall specifically request that the Assistant Secretary recognize an assignment of a fixed sum to which the Regional Corporation may be entitled from the Fund;

(3) Shall designate a payee of the amount assigned;

(4) Shall be accompanied by a duly-adopted resolution of the Board of Directors of the Regional Corporation, which resolution authorizes the making of the assignment and the application for recognition of that assignment by the Secretary of the Interior, or evidence of stockholder approval when required by Alaska state law; and

(5) Shall be accompanied by one executed copy and three facsimile copies of a validly executed assignment of all or a portion of the Regional Corporation's assignable future interest in the Fund, which assignment shall contain the following language:

(i) The parties to this assignment agree to seek recognition of this assignment by the Secretary of the Interior, as authorized by section 4 of the Act of November 15, 1977, Pub. L. 95–178 (91 Stat. 1369, 1370).

(ii) It is understood by the parties to this assignment that in the event the Secretary of the Interior recognizes this assignment, the United States reserves the right to assert against the assignee and successors of the assignee, any setoff or counterclaim which the United States has, or may have, against the Assignor Corporation.

(e)(1) An assignment may provide that:

(i) All of the assignable portion of each quarterly distribution be paid to the payee designated in the application for recognition of assignment;

(ii) A fraction of the assignable portion of each quarterly distribution be paid to the designated payee; or that

(iii) The assignable portion of each quarterly distribution, up to a stated maximum amount, be paid to the designated payee.

(2) Other formulas for assignment of assignable future interests may be recognized if:

(i) Such a formula clearly identifies what portion of each affected quarterly distribution is to be paid to the designated payee, and

(ii) The formula will permit the Assistant Secretary to set priorities in accordance with §123.7 when subsequent application is made for recognition of additional assignments.

§123.5 Register of recognized assignments.

The Assistant Secretary shall maintain and make available for inspection by the public a register of requests for recognition of assignments and assignments recognized by him pursuant to the regulations in this part. Such register shall list the name of the Regional Corporation; the name and address of the assignee; the name, address, American Banking Association number, and account number for deposit of the payee of the amount assigned; the amount assigned; the amount paid at each quarterly distribution under the terms of the assignment; and the date of the Assistant Secretary's recognition.

§123.6 Sub-assignment.

(a) Nothing in the regulations in this part shall prohibit an assignee from making a valid sub-assignment of a Regional Corporation's rights to receive payments from the Fund. However, the Assistant Secretary has no authority and shall not recognize any sub-assignment by the assignee of any future interest of a Regional Corporation in the Fund.

(b) The Assistant Secretary may accept a re-designation of a new payee of an assignment recognized by the Assistant Secretary, upon application of an authorized official of the assignee in accordance with §123.3(c).

§123.7 Multiple assignments.

(a) The Assistant Secretary may recognize more than one assignment of a Regional Corporation's future interests

in the Fund. A second or later assignment of a Regional Corporation's future interest in the Fund, when recognized in accordance with § 123.4, shall be recognized subject to assignments already recognized.

(b) The Assistant Secretary shall not recognize an assignment of a Regional Corporation's future interest in the Fund if he has more than one outstanding application from that Corporation seeking recognition of such future interests. If more than one application from a Regional Corporation is pending before the Assistant Secretary, he shall notify both the Regional Corporation and the assignees of the assignments sought to be recognized, and seek a written consensus on the priorities to be established. In the Absence of such a consensus, the Assistant Secretary shall not recognize any such assignment.

§ 123.8 Disclaimer.

The Assistant Secretary does not guarantee by any action taken pursuant to the regulations in this part that the entitlement of a Regional Corporation to any quarterly distribution of the Fund shall be of any given amount, or that the cumulative entitlement of that Corporation will reach any given sum.

§ 123.9 Cancellation of assignments.

(a) The Assistant Secretary shall cancel his recognition of an assignment upon joint application of the assignee and Regional Corporation involved. Such application must include a resolution of the Board of Directors of the Regional Corporation, and a validly executed agreement between the Regional Corporation and assignee cancelling the assignment and authorizing the Secretary of the Interior to cancel his recognition of the assignment.

(b) Such cancellation of recognition of an assignment shall be reflected in the register compiled by the Assistant Secretary as provided in § 123.5.

§ 123.10 Decision; finality.

(a) A decision of the Assistant Secretary not to recognize an assignment of a future interest in the Fund shall inform the Regional Corporation what defects, if any, remain in its application for recognition, and shall provide the corporation with an opportunity to cure those defects.

(b) A decision of the Assistant Secretary to recognize an assignment of a Regional Corporation's future interest in the Fund shall not be subject to reconsideration or administrative appeal, and shall therefore be final for the Department.

PART 124—PROCEDURES FOR DEPOSITING FUNDS TO THE CREDIT OF 14X6140-DEPOSITS OF PROCEEDS OF LANDS WITHDRAWN FOR NATIVE SELECTION, BIA

Sec.

124.1 Purpose.
124.2 Proceeds received by Federal agencies.
124.3 Proceeds received by the State of Alaska.

AUTHORITY: 89 Stat. 1145.

SOURCE: 42 FR 32229, June 24, 1977, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 124.1 Purpose.

The purpose of the regulations in this part is to describe the procedures to be used by all Departments and Agencies of the Federal Government and the State of Alaska for the deposit of proceeds derived from contracts, leases, permits, and rights-of-way or easements pertaining to affected lands or resources in affected lands withdrawn for Native selection pursuant to the Alaska Native Claims Settlement Act.

§ 124.2 Proceeds received by Federal agencies.

(a) *Direct deposits.* (1) Agency will prepare Deposit Ticket (SF 215), using Agency Accounting Station Code 14–20–0650.

(2) In Block (6) Fund Symbol 14X6140 will be inserted as well as the following:

Credit to Bureau of Indian Affairs, Branch of Finance and Accounting, P.O. Box 127, Albuquerque, New Mexico 87103.

(3) Memorandum copy and confirmed copy of Deposit Ticket will be mailed to above address, immediately upon completion and confirmation.

(4) Agency will provide information (lease, contract or other identification) which will permit depositing agency to

identify deposit with particular plot of land at time distribution of the funds is to be made. This information can be shown in Block (6) if space permits, or on an attached listing.

(b) *Periodic deposits.* (1) In some circumstances, collection from Withdrawn Lands will be in such small amounts and such frequency as to be administratively burdensome to make individual deposits to the fund, or collections may be mixed with collections to be credited to other funds. In such instances depositing agencies may initially deposit the collections to their own suspense accounts. Such deposits will then be transferred to Fund 14X6140 no less frequently than monthly. The ''Pay to'' side of the SF 1081 will be completed as follows:

Department, Interior.
Bureau, Indian Affairs.
Agency Station Symbol, 14–20–0650.
Address, Albuquerque, NM 87103.
Appropriation or Fund Symbol, 14X6140.

and will be supported by sufficient detail to permit future identification by depositing agency. An advance copy of the SF 1081, with supporting documentation will be forwarded to the BIA at Albuquerque immediately.

(2) Agencies not using the SF 1081 procedures will issue a check made payable to the Treasurer of the United States, and forward it to:

Juneau Area Office, Bureau of Indian Affairs, P.O. Box 8000—B, Juneau, Alaska 99802.

accompanied by a listing in sufficient detail to permit the collecting agency to identify the collections with each parcel of land at the time distribution of the funds is to be made.

§124.3 Proceeds received by the State of Alaska.

The State agency responsible for making collections will deposit the proceeds to the credit of the State of Alaska. A check will then be issued, payable to the Treasurer of the United States, and will be forwarded to the Juneau Area Office, Bureau of Indian Affairs, accompanied by a detailed listing providing information which will permit identification of the funds with each particular parcel of land at the time distribution of the funds is to be made. The Juneau Area Office will deposit all such receipts to the credit of Fund Symbol 14X6140, forwarding the memorandum copy to the Branch of Finance and Accounting immediately, together with a copy of the detail provided by the State of Alaska.

PART 125—PAYMENT OF SIOUX BENEFITS

Sec.
125.1 Scope.
125.2 Purpose.
125.3 Definitions.
125.4 Eligibility.
125.5 Application procedure.
125.6 Administration.
125.7 Information collection.

AUTHORITY: Act of March 2, 1889, c. 405, sec. 17, 25 Stat. 888, 895; Act of June 10, 1896, c. 398, 29 Stat. 321, 334; Act of May 21, 1928, c. 662, 45 Stat. 984; Act of June 18, 1934, c. 576, §14, 48 Stat. 987, 25 U.S.C. 474.

SOURCE: 46 FR 36136, July 14, 1981, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§125.1 Scope.

The regulations in this part govern the payment of ''Sioux benefits'' to allotted Sioux Indians under the Act of March 2, 1889, c. 405, §17, 25 Stat. 888, 895; the Act of June 10, 1896, c. 398, 29 Stat. 321, 334; and the Act of May 21, 1928, c. 662, 45 Stat. 984; and to unallotted Sioux Indians on the Cheyenne River Indian Reservation under the Act of June 18, 1934, c. 576, §14, 48 Stat. 987, 25 U.S.C. 474.

§125.2 Purpose.

The purpose of these regulations is to implement the provisions of federal statutes which provide for the payment of ''Sioux benefits'' to Sioux Indians by setting forth the criteria governing eligibility for and entitlement to ''Sioux benefits'' and by establishing procedures governing application for and payment of ''Sioux benefits.''

§125.3 Definitions.

As used in this part, the term—

(a) ''Area Director'' means the Area Director, Aberdeen Area Office, BIA, or his/her delegate.

(b) ''Bureau'' or ''BIA'' means the Bureau of Indian Affairs, Department of the Interior.

(c) ''Commissioner'' means the Commissioner of Indian Affairs, BIA, or his/her delegate.

(d) ''Sioux benefits'' means the allotment of stock and farming equipment plus $50.00 cash as provided for by the Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895, or its commuted cash value as provided in the Act of June 10, 1896, c. 398, 29 Stat. 321, 334.

(e) ''Sioux Indian'' means a member of any of the bands or tribes comprising the Sioux Nation of Indians to which the Act of March 2, 1889, c. 405, 25 Stat. 888, applied.

(f) ''Single person'' includes all unmarried persons (other than an unmarried person under the age of eighteen years) and any person who is legally separated, divorced, or widowed.

(g) ''Head of a family'' means only:

(1) A married person who meets the requirements of § 125.4(c)(1) or (2) (if living with his/her spouse) or § 125.4(c)(3) (if not living with his/her spouse), and

(2) An unmarried person under the age of eighteen years who meets the requirements of § 125.4(c)(3).

(h) For the purpose of determining family support under §§ 125.4(c)(2) and 125.4(c)(3), ''family'' means two or more persons (including the applicant) related by blood, through marriage, or by adoption to the applicant and who live together in the same household and are dependent upon the applicant for all or part of their support.

§ 125.4 Eligibility.

(a) *Allotted Sioux Indians.* The eligibility of allotted Sioux Indians for Sioux benefits is governed by the Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895; the Act of June 10, 1896, c. 398, 29 Stat. 321, 334; and the Act of May 21, 1928, c. 662, 45 Stat. 984. The Act of June 18, 1934, c. 576 § 14, 48 Stat. 987, 25 U.S.C. 474, is inapplicable to any Sioux Indian to whom an allotment of land has been made under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior federal statute. Under the applicable statutes, an allotted Sioux Indian is eligible for Sioux benefits if—

(1) He/she received a valid allotment of land under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior Federal statute (regardless of whether such allotment is still held by the applicant);

(2) He/she is either a single person over the age of eighteen (18) years *or* a head of a family (as provided in § 125.4(c));

(3) He/she has duly made application for Sioux benefits, and such application has been approved during his/her lifetime (as provided in § 125.5); *and*

(4) He/she has not previously been paid Sioux benefits in his/her own right (as provided in § 125.4(d)).

(b) *Unallotted Sioux Indians.* The Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474, applies only to Sioux Indians who, but for the provisions of section 1 of that Act, 25 U.S.C. 461, would have been eligible for an allotment of land under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior Federal statute, and have not, in fact, been allotted lands under the provisions of such Federal statutes. That Act has current application only to unallotted members of the Cheyenne River Sioux Tribe because of the proviso that the payment of Sioux benefits under that Act would continue only until such time as the lands available for allotment on each reservation as of June 18, 1934, would have been exhausted by the allotment of eighty (80) acres of land to each person receiving Sioux benefits under that Act. Under this statute a member of the Cheyenne River Sioux Tribe *is* eligible for Sioux benefits if—

(1) He/she would be eligible, but for the provisions of the Act of June 18, 1934, c. 576, § 1, 48 Stat. 984, 25 U.S.C. 461, for an allotment of land under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior Federal statute, and has not been allotted lands under the provisions of such Federal statutes;

(2) He/she is either a single person over the age of eighteen (18) years *or* a head of a family (as provided in § 125.4(c));

(3) He/she has duly made application for Sioux benefits and such application has been approved during his/her lifetime (as provided in § 125.5);

(4) He/she has not previously been paid Sioux benefits in his/her own right (as provided in § 125.4(d)); *and*

(5) The hypothetical allotment of 80 acres of tribal land to the applicant would not exhaust the lands available for allotment on the Cheyenne River Indian Reservation as of June 18, 1934, considering the allowance of similar hypothetical allotments to other such Indians previously receiving Sioux benefits under such Act.

(c) *Head of a family*. The following criteria apply in determining head of family status under both §§125.4(a) and 125.4(b).

(1) Except as provided in §125.4(c)(2), when an applicant for Sioux benefits is married and living with his/her spouse, the applicant will be deemed to be a head of a family if designated as such by both the applicant and his/her spouse.

(2) When an applicant for Sioux benefits is married and living with his/her spouse, but the applicant's spouse (i) does not concur in the applicant's designation as head of the family, or (ii) has previously received Sioux benefits as head of the family which includes the applicant, the applicant will be deemed to be a head of a family if the economic contribution to the support of the family attributable to the applicant exceeds the contribution by his/her spouse for the eighteen (18) months period immediately preceding the date of the application for Sioux benefits.

(3) When an applicant for Sioux benefits is (i) unmarried, or (ii) married, but not living with his/her spouse, the applicant will be deemed to be a head of a family if the primary source of economic contribution to the support of the family is attributable to the applicant. Welfare or support payment made to the applicant by the government or his/her spouse shall be deemed attributable to the applicant.

(4) The Bureau shall not presume that a husband is a head of a family for purposes of this part solely because of his status as a husband. The Bureau shall not presume that a wife is not a head of a family for purposes of this part solely because of her status as a wife.

(5) The Bureau shall not presume that a Sioux woman married to a non-Sioux man is a head of a family for purposes of this part solely because of such status. The Bureau shall not presume that a Sioux woman marrried to a Sioux man is not a head of a family for purposes of this part solely because of such status.

(d) *Double benefits*. The prohibition against multiple payment of Sioux benefits to a person in his/her own right extends to the payment of Sioux benefits under any Federal statute. However, a person will not be deemed to have received payment of Sioux benefits in his/her own right due to the fact that:

(1) Sioux benefits were paid to such person in his/her capacity as an heir of an Indian who, under prior law, was held to have a vested right to receive such benefits as of the date of death, or

(2) Sioux benefits have previously been paid to that person's spouse or former spouse. Although the prohibition against double benefits would not preclude both spouses from receiving Sioux benefits during their marriage (assuming they both were otherwise eligible) or preclude a widowed or divorced applicant from receiving Sioux benefits merely because his/her spouse had previously received Sioux benefits, an applicant would not be able to receive Sioux benefits in his/her own right first as a single adult and again as a head of a family, or vice versa.

§125.5 Application procedure.

(a) *Agency Superintendent*. Application for Sioux benefits must be submitted to the Agency Superintendent for the reservation and shall contain such information as may be prescribed by the Bureau. Applications must be submitted within the lifetime of the applicant. Within thirty (30) days of receipt of a completed application, the Agency Superintendent shall verify the necessary information and forward the application and relevant documentation to the Area Director along with his/her recommendation for approval or disapproval.

(b) *Area Director*. Within fourteen (14) days of receipt of an application from the Agency Superintendent, the Area Director shall approve or disapprove the application and notify, in writing, the applicant and the Agency Superintendent of such decision and, if denied, the reasons therefor. Failure of the Area Director to act within the

specified time shall have the effect of approval of the application.

(c) *Appeal.* Approval of an application by the Area Director shall be final and conclusive. Disapproval of an application may be appealed to the Commissioner pursuant to the administrative review procedures of 25 CFR part 2, and the Commissioner's determination shall be subject to the administrative appeal procedures of 43 CFR part 4, subpart D. Approval of an application on administrative appeal or pursuant to judicial review shall relate back to the date of the Area Director's decision.

(d) *Prior applications.* (1) Eligibility for Sioux Benefits will be determined by an applicant's status as of the date of application, except that where an applicant's application was disapproved prior to the promulgation of these regulations under the provisions of previous Bureau regulations or policies, the applicant may reapply and, if he/she so requests, have his/her eligibility determined based upon his/her status as of the date of such prior application, which shall be deemed to be the date of the application, but nothing in this subsection shall be construed to allow any application to be made on behalf of a deceased Sioux Indian whose prior application was disapproved.

(2) Unallotted Sioux Indians of the Pine Ridge and Rosebud Reservations whose applications were submitted and disapproved prior to the termination of payment of Sioux benefits on each respective reservation may reapply for benefits under this subsection within one year of the effective date of this part and receive payment if their eligibility under § 125.4(b) is established as of the date of such initial application.

(e) *Information collection.* The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1076–0004. The information is being collected to provide information necessary for the Bureau to determine eligibility for Sioux benefits. This information will be used to grant statutory benefits. The obligation to respond is required to obtain a benefit.

[46 FR 36136, July 14, 1981; 46 FR 38074, July 24, 1981. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 125.6 Administration.

(a) No payment of Sioux benefits may be made unless an application therefor has been made and approved during the lifetime of the applicant as provided by Federal law.

(b) Payment of Sioux benefits shall be made in accordance with a budget or plan for expenditure submitted by the applicant and approved by the Agency Superintendent.

(c) The Commissioner shall annually compute the commuted monetary value of Sioux benefits to be effective on October 1 of that year and notify the affected tribes and Bureau agencies of such determination.

(d) The Area Director shall annually notify both the Cheyenne River Sioux Tribe and the Commissioner of the number of Sioux benefits remaining available to be paid under the provisions of the Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474.

§ 125.7 Information collection.

The information collection requirements contained in §§ 125.4 and 125.5 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0004. The information is being collected to solicit information necessary to make a determination of eligibility for Sioux benefits. The information will be used to determine eligibility for payment. Response is required to obtain a benefit.

[53 FR 21995, June 13, 1988]

PART 134—PARTIAL PAYMENT CONSTRUCTION CHARGES ON INDIAN IRRIGATION PROJECTS

Sec.

134.1 Partial reimbursement of irrigation charges; 5 percent per annum of cost of system, June 30, 1920.
134.2 Landowners financially unable to pay.
134.3 Period for payments extended.
134.4 Annual payment reduced.
134.4a Assessment and collection of additional construction costs.

134.5 Payments to disbursing officer.
134.6 ''Owner'' defined.
134.7 Modifications.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. Interpret or apply sec. 1, 41 Stat. 409; 25 U.S.C. 386.

SOURCE: 22 FR 10643, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§134.1 Partial reimbursement of irrigation charges; 5 percent per annum of cost of system, June 30, 1920.

In pursuance of the act of February 14, 1920 (41 Stat. 409; 25 U.S.C. 386), regulations governing partial payment of construction charges on Indian irrigation projects, with the exception of certain ones mentioned therein, where approved by the Department June 21, 1920, and require that each owner of irrigable land under any irrigation system constructed for the benefit of Indians under provisions of law requiring reimbursement of the cost of such system and to which land, water for irrigation purposes can be delivered from such system, shall pay, on or before November 15, 1920, a sum equal to 5 percent of the per acre cost, as of June 30, 1920, of the construction of the system under which such land is situated. The per acre cost of a given system as of June 30, 1920, shall be determined by dividing the total amount expended for construction purposes on such system up to that day by the total area of land to which water for irrigation purposes can be delivered on that date; and on November 15 of each year following the year 1920, until further notice, the land owners, as therein prescribed, shall pay 5 percent of the per acre construction cost as of June 30, of the current year, such per acre cost to be determined by dividing the cost of the system to June 30 of that year by the total area of land to which water for irrigation purposes can be delivered from the system on that date. Provision is contained that no payments shall be required under the regulations in behalf of lands still in process of allotment or prior to the issuance of the first or trust patent therefor, nor for lands reserved for school, agency, or other administrative purposes where the legal title still remains in the United States.

§134.2 Landowners financially unable to pay.

Considerable difficulty has been encountered in collecting charges under the regulations in this part owing to the fact that Indians have been financially unable to pay the charges, the result being that the construction charges have accrued against the lands and in cases where the land is sold for the benefit of the allottee or his heirs under the regulations, the purchaser is to pay the accrued and future irrigation charges which make it difficult in some instances, to sell the land at as favorable terms as might otherwise be secured.

§134.3 Period for payments extended.

Furthermore, in recent legislation dealing with specific projects in the Bureau and also all reclamation projects the policy has been to extend the payment of such charges over a longer period of years.

§134.4 Annual payment reduced.

In view of these conditions the regulations governing this matter are hereby modified so as to distribute the unaccrued installments over a period of time so that 2½ percent of the total amount yet due shall be due and payable on November 15 of each year until further notice. You shall accordingly ascertain the per acre cost after deducting the amount of the accrued charges and take 2½ percent of that amount and a like sum each year so that the amount of the annual installments will be the same each year. Superintendents are obligated to submit all proposed lists of sales involving allotments containing irrigable allotments to the project or supervising engineer for checking, as to the irrigable acreage and amounts of unpaid construction, operation, and maintenance charges against such allotments. Each sale forwarded to the Bureau for action shall be accompanied by contract executed on Form 5–462b where irrigable acreage is involved and after approval thereof a copy of contract on said form shall be sent to the project engineer for his records and the charges paid by the purchaser shall be turned over to the disbursing agent for credit and deposit as instructed in the next paragraph.

The regulations in this part shall not apply to lands in the Wapato project, on the Yakima Indian Reservation, nor to the irrigation projects on the Blackfeet, Fort Peck, Flathead, and Crow Reservations, Montana, for which special regulations have been issued nor to the Fort Hall Reservation, Idaho, or the San Carlos project, Arizona.[1]

CROSS REFERENCES: For special regulations applying to San Carlos project, see part 137 of this chapter. For further information concerning Form 5–462b, see part 159 of this chapter.

§ 134.4a Assessment and collection of additional construction costs.

(a) Upon the completion of the construction of an Indian irrigation project, or unit thereof, subsequent to the determination of the partial per acre construction assessment rate which was fixed prior to July 1, 1957, pursuant to § 134.4 the Secretary of the Interior or his authorized representative shall determine such additional construction cost and distribute that cost on a per acre basis against all of the irrigable lands of the project, or unit thereof, and 1/40th of such per acre additional construction cost thus determined shall be assessed and collected annually from the non-Indian landowner of the project, or unit, thereof. The first installment shall be due and payable on November 15 of the year following the completion of such additional construction work or, if such additional construction work on the project, or unit thereof, has been completed prior to July 1, 1957, and the per acre annual rate determined, the first installment of the additional construction cost to be repaid by such non-Indian landowners shall be due and payable on November 15, 1958. This annual per acre rate shall be in addition to, and run concurrently with, the per acre construction rate assessed annually under § 134.4.

(b) Project lands in Indian ownership are not subject to assessment for their proportionate share of the per acre construction cost of the project, or unit thereof, until after the Indian title to the land has been extinguished. At that time the total annual per acre assessment rate against non-Indian lands of the project, or unit thereof, shall be assessed against the former Indian lands for each and every acre of irrigable land to which water can be delivered through the project works, beginning on November 15 of the year following the extinguishment of the Indian title to the land and on November 15 of each year thereafter over a forty year period. In cases where the Indian title to project land was extinguished prior to July 1, 1957, the assessment rate shall be due and payable on November 15, 1958.

§ 134.5 Payments to disbursing officer.

Payments under this part shall be made to the disbursing officer for the supervising engineer of the Indian Irrigation Service having jurisdiction over the irrigation system under which the land for which payment is made may lie. The sum so collected will then, after proper credit has been made to the land for which collected, be deposited in the Treasury of the United States to the credit of the respective funds used in constructing irrigation systems toward which reimbursement shall have been made.

§ 134.6 "Owner" defined.

The word ''owner'' as used in this part shall be construed to include any person, Indian or white, or any firm, partnership, corporation, association, or other organization to whom title to the land capable of irrigation, as provided in the act of February 14, 1920 (41 Stat. 409; 25 U.S.C. 386), has passed, either by fee or trust patent, or otherwise.

§ 134.7 Modifications.

The act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a), cancelled all irrigation assessments for construction costs against lands in Indian ownership which were unpaid at that date and deferred all future assessments for construction costs until the Indian title to the land shall have been extinguished.

[1] The special regulations for Wapato, Fort Peck, and Flathead, were not codified. Operations of the Blackfeet project were discontinued by the Bureau, July 20, 1938, effective September 30, 1933.

PART 135—CONSTRUCTION ASSESSMENTS, CROW INDIAN IRRIGATION PROJECT

Subpart A—Charges Assessed Against Irrigation District Lands

Sec.
135.1 Contracts.
135.2 Annual rate of assessments.
135.3 Annual assessments.
135.4 Time of payment.
135.5 Penalty.
135.6 Refusal of water delivery.

Subpart B—Charges Assessed Against Non-Indian Lands Not Included in an Irrigation District

135.20 Private contract lands; assessments.
135.21 Time of payment.
135.22 Penalty.
135.23 Refusal of water delivery.

AUTHORITY: Sec. 15, 60 Stat. 338.

SOURCE: 22 FR 10644, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

Subpart A—Charges Assessed Against Irrigation District Lands

§135.1 Contracts.

Under provisions of the act of Congress approved June 28, 1946 (60 Stat. 333-338), contracts were executed June 28, 1951, by the United States with the Lower Little Horn and Lodge Grass Irrigation District and the Upper Little Horn Irrigation District providing for the payment, over a period of 40 years, by each of the Districts of its respective share of the sum of $210,726 expended for the construction of the Willow Creek storage works on account of non-Indian lands within the Districts entitled to share in the storage water, directly or by substitution.

§135.2 Annual rate of assessments.

Within the Lower Little Horn and Lodge Grass Irrigation District there are 3,196.8 acres for which the District is obligated by contract to pay its proper share of the total construction costs. Within the Upper Little Horn Irrigation District there are 1,554.7 acres for which the District is obligated by contract to pay its proper share of the total construction costs. There are 3,237.6 acres, more or less, covered by contracts with private landowners, obligating such owners to pay their proper share of such construction costs. The total per acre charge against all such lands is $26.38. This amounts to an annual per acre rate of $0.6595. For the purpose of this notice the annual per acre rate is hereby fixed at $0.66. This annual per acre rate of assessment will continue for a 40-year period within which the total amount of construction costs of $210,726 is to be repaid without interest. The amount of each annual installment chargeable against each of the Districts for the acreage covered by their respective contracts shall be determined by multiplying the total acreage, under each contract entitled to Willow Creek storage rights, either directly or by subsituation, by the per acre annual rate.

§135.3 Annual assessments.

Notice is hereby given of an annual assessment of $2,108.05 to be repaid by the Lower Little Horn and Lodge Grass Irrigation District for the 3,196.8 acres of irrigable land of the District, and an annual assessment of $1,025.06 to be repaid by the Upper Little Horn Irrigation District for the 1,554.7 acres of irrigable land of the District. Against the amounts due annually by the Districts under this notice, there shall be allowed any credits due under section 6 of the act of June 28, 1946. Credits due on behalf of any land shall be reflected by the respective Districts when placing against such land the annual assessment on the tax rolls.

§135.4 Time of payment.

Annual assessments shall be paid by the Districts to the United States, one-half thereof on or before February 1 and one-half thereof on or before July 1 following, of each year commencing with the calendar year 1952.

§135.5 Penalty.

To all assessments not paid on the due date, there shall be added a penalty of one-half of one percent per month or fraction thereof, from the due date so long as the delinquency continues.

§135.6 Refusal of water delivery.

The right is reserved to the United States to refuse the delivery of water

to each of the said Irrigation Districts in the event of default in the payment of assessments, including penalties on account of delinquencies.

Subpart B—Charges Assessed Against Non-Indian Lands Not Included in an Irrigation District

§ 135.20 Private contract lands; assessments.

In addition to 4,751.5 acres of non-Indian land included within the two irrigation Districts dealt with in subpart A, there are 3,237.6 acres of land, more or less, in non-Indian ownership under private ditches, covered by repayment contracts executed pursuant to the act of June 28, 1946 (60 Stat. 333–338), obligating such owners to pay their proper share of such construction costs. The total per acre charge against all such lands is $26.38. This amounts to an annual per acre rate of $0.6595. For the purposes of this notice the annual per acre rate is hereby fixed at $0.66. This annual rate of assessment will continue for a 40-year period within which the total amount of construction cost of $210,726 is to be repaid without interest. The amount of each annual installment chargeable against the lands covered by each of the several contracts with individual landowners whose lands are served under private ditches, shall be determined by multiplying the total acreage, under each contract entitled to Willow Creek storage rights, either directly or by substitution, by the per acre annual rate. Against the amounts due annually by the individual landowners whose lands are served by private ditches, under this notice there shall be allowed any credits due under section 6 of the act of June 28, 1946. Credits due on behalf of any land shall be reflected in any statement submitted to the landowners.

§ 135.21 Time of payment.

The amount of each annual installment, payable under the private landowner contracts, determined as provided in this part shall be paid by the landowners to the United States, on or before November 15 of each year commencing with the calendar year 1951.

§ 135.22 Penalty.

To all assessments not paid on the due date there shall be added a penalty of one-half of one percent per month or fraction thereof, from the due date so long as the delinquency continues.

§ 135.23 Refusal of water delivery.

The right is reserved to refuse the delivery of water to any landowner in the event of default in the payment of assessments, including penalties on account of delinquencies.

PART 136—FORT HALL INDIAN IRRIGATION PROJECT, IDAHO

Sec.
136.1 Repayment contracts.
136.2 Construction costs.
136.3 Repayment of construction costs.

AUTHORITY: Sec. 9, 46 Stat. 1063.

SOURCE: 22 FR 10645, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 136.1 Repayment contracts.

A rehabilitation program was established on the Fort Hall Unit of the Fort Hall Project in 1936. Based upon the estimated construction costs, contracts were signed by all non-Indian landowners within the project, including such landowners within the Little Indian Unit, now a part of the Fort Hall Unit. Under the terms of their contracts, the landowners agreed to repay to the Government their pro rata share, on an acreage basis, of all expenditures for construction and other necessary improvements for carrying out the approved program, payments not to exceed $7.50 per acre, based upon an estimated expenditure of $450,000.00 for a project then considered as covering approximately 60,000 acres.

§ 136.2 Construction costs.

The program of rehabilitation has now been completed at a cost of $419,186.52. This amount, chargeable on an equal per acre basis against 60,000 acres, amounts to a rate of $6.986 per acre, which rate is hereby determined to be the per acre cost to be repaid to the United States under the 1936 contracts.

§136.3 Repayment of construction costs.

Under the terms of the contracts, the landowners agreed to repay the construction cost in forty (40) equal annual installments. Therefore, the annual per acre installment is hereby fixed at seventeen and one-half cents (17½ cents) per acre, due and payable on December 1st of each year, the first payment being due on December 1, 1955. Under section 4 of the repayment contracts of the landowners and the act of March 10, 1928 (45 Stat. 210), the charges remain a lien against the lands until paid.

PART 137—REIMBURSEMENT OF CONSTRUCTION COSTS, SAN CARLOS INDIAN IRRIGATION PROJECT, ARIZONA

Sec.
137.1 Water supply.
137.2 Availability of water.
137.3 Construction charges.
137.4 Future charges.
137.5 Construction costs limited.
137.6 Power development.
137.7 Private ownership defined.
137.8 Indian lands excluded.

AUTHORITY: Sec. 5, 43 Stat. 476.

SOURCE: 22 FR 10645, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§137.1 Water supply.

The engineering report dealt with in section 1 of the act of June 7, 1924 (43 Stat. 475) and other available records show that the storage capacity of the San Carlos reservoir created by the Coolidge Dam and the water supply therefor over a period of years will provide for the irrigation of only 80,000 acres of lands in Indian and public or private ownership within the San Carlos irrigation project, the balance of the water supply needed for the additional 20,000 acres of the project to be provided for by recaptured and return flow water and by means of pumping the underground supply. The cost of providing the proposed supply and of operating the works for this latter acreage to be equally distributed over the entire 100,000 acres of the project regardless of where the works are placed and operated.

§137.2 Availability of water.

Pursuant to section 3 of the act of June 7, 1924 (43 Stat. 475), requiring the Secretary of the Interior by public notice to announce when water is actually available for lands in private ownership under the project and the amount of the construction charges per irrigable acre against the same which charges shall be payable in annual installments as provided for therein, this public notice, of which §137.1 is made a part hereof, is hereby given:

The date when a reasonable water supply is actually available for lands in private ownership under the San Carlos irrigation project is hereby declared to be the 1st day of December 1932.

§137.3 Construction charges.

Each acre of land in private ownership of said project is hereby charged with $95.25 of construction cost assessable thereto at the date hereof (Dec. 1, 1932), which sum is based upon 50,000 acres of such privately owned lands, making a total charge or assessment due from the owners thereof of $4,762,250 on this date (Dec. 1, 1932), excluding the cost of operation and maintenance for the calendar year of 1933 which may be carried into construction cost as provided for by section 3 of the act of June 7, 1924 (43 Stat. 476), and also excluding interest at the rate of 4 percent which is charged against such lands by said act. Of the 50,000 acres constituting the lands in private ownership within the said project only 46,107.49 acres have at this date (Dec. 1, 1932) actually been designated as coming within the project. Should this present designated area be not increased within a reasonable time herefrom and prior to the due date of the first installment of the charge fixed in this section, namely, on December 1, 1935, so as to bring the total designated area up to the 50,000 acres, the per acre charge fixed in this section shall be proportionately increased against the then designated area so as to assure reimbursement of the total indebtedness due the Government by the owners of the lands in private ownership from the lesser designated acreage.

§ 137.4 Future charges.

The payment of said construction cost and costs of future operation and maintenance of said project as provided for in said section 3 of the act of June 7, 1924 (43 Stat. 476), as supplemented or amended and such contingent project liabilities which may be incurred in accordance with the provisions of said repayment contract shall be made in accordance with the provisions of said act of June 7, 1924, as supplemented or amended and the repayment contract by and between the San Carlos irrigation and drainage district and the Secretary of the Interior bearing date of June 8, 1931; the said construction cost incurred subsequent to this public notice assessable against the lands in private ownership and costs of operation and maintenance assessed against such privately owned lands within the project for the first year after this public notice to be included in the construction cost and such contingent project liabilities which may be incurred in accordance with provisions of the repayment contract shall also be repaid to the Government pursuant to the terms of said act of June 7, 1924, as supplemented or amended, and the repayment contract and this public notice.

§ 137.5 Construction costs limited.

The repayment contract[1] with the San Carlos irrigation and drainage district, page 13 thereof, contains the following:

> In accordance with the foregoing the costs of the San Carlos project as fixed by the public notice to be issued as aforesaid, unless further sums shall be agreed to by the Secretary of the Interior and the district after the execution of this instrument, may amount to but shall not exceed the sum of $9,556,313.77, except that said total may be exceeded by the inclusion of any sums expended to safeguard the project as hereinabove provided for, and any sums expended on account of contingent liabilities as in the next paragraph hereof provided.
>
> The foregoing and subsequent statements of project costs, the district's shares of which are to be repaid hereunder, unless otherwise provided by Congress more favorably to the lands of the project, may be increased by the addition of sums not now fixed as project charges but which possibly constitute contingent project liabilities incurred after the date of the San Carlos Act of June 7, 1924 (43 Stat. 476), or incurred on account of the Florence-casa Grande project, and so may become project charges by the judgment of courts of competent jurisdiction or of other proper authority.
>
> The limitations therein fixed has approximately been reached, there remaining but $32,815.02 yet to be expended on project works before reaching that limitation. Upon the expenditure of this additional sum there shall be no further expenditures of funds for construction, operation and maintenance of the San Carlos project so far as the private lands are concerned until the San Carlos irrigation and drainage district shall, through appropriate action, authorize pursuant to the terms of the said repayment contract such additional expenditures. This limitation does not apply to project expenditures for the extension of the distributing and pumping system regardless of where they may arise. This class of expenditures being excepted from the limitation on expenditures contained in the said repayment contract by section 14, page 10, thereof, which section is known as the ''Equalization of Expenditures.''

§ 137.6 Power development.

The cost of the power development at the Coolidge Dam is hereby fixed at $735,000. The net revenues derived from the operation of this power development shall be disposed of as required by the terms and conditions of the act of March 7, 1928 (45 Stat. 210) as supplemented or amended.

§ 137.7 Private ownership defined.

The term ''private ownership'' used in this public notice includes all lands of the San Carlos irrigation project that have or may be designated by the Secretary of the Interior that are situated outside of the boundaries of the Gila River Indian Reservation.

§ 137.8 Indian lands excluded.

This public notice, with the exception of that part dealing with payment in advance each year of operation and maintenance charges against lands in Indian ownership operated under lease, does not apply in so far as payments are concerned to Indian lands within the project. The act of July 1, 1932 (47

[1] Contract available at the Bureau of Indian Affairs, Washington, D.C.

Stat. 564; 25 U.S.C. 386a) defers the collection of construction costs from Indian owned lands so long as the title to such lands remains in the Indian ownership.

PART 138—REIMBURSEMENT OF CONSTRUCTION COSTS, AHTANUM UNIT, WAPATO INDIAN IRRIGATION PROJECT, WASHINGTON

Sec.

138.1 Construction costs and assessable acreage.
138.2 Repayment of construction costs.
138.3 Payments.
138.4 Deferment of assessments on lands remaining in Indian ownership.
138.5 Assessments after the Indian title has been extinguished.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385.

SOURCE: 22 FR 10646, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§138.1 Construction costs and assessable acreage.

The construction program has been completed on the Ahtanum Unit of the Wapato Indian Irrigation Project and the construction costs have been established as $79,833.64. The area benefited by this development has been established at 4,765.2 acres. Under the requirements of the acts of February 14, 1920 (41 Stat. 409) and March 7, 1928 (45 Stat. 210), these costs are to be repaid to the United States Treasury by the owners of the lands benefited.

§138.2 Repayment of construction costs.

The cost per acre under §138.1 is, therefore, established at $16.7535. Under the provisions of the acts of February 14, 1920 (41 Stat. 409) and March 7, 1928 (45 Stat. 210) is based on forty equal annual payments, the annual per acre assessment is hereby fixed at $0.42 per acre for the year 1957 and each succeeding year until the entire cost for each tract shall have been repaid to the United States Treasury. On those tracts where payments have been made pursuant to part 134 of this chapter, annual assessments beginning with the year 1957 at the rate of $0.42 per acre will be made until the entire cost of $16.7535 per acre shall have been repaid to the United States Treasury. Landowners may pay at any time the total of the then remaining indebtedness. Under the act of March 10, 1928 (45 Stat. 210) the unpaid charges stand as a lien against the lands until paid.

[22 FR 10646, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982; 48 FR 13414, Mar. 31, 1983]

§138.3 Payments.

Payments are due on December 31 of each year and shall be made to the official in charge of collections for the project.

§138.4 Deferment of assessments on lands remaining in Indian ownership.

In conformity with the act of July 1, 1932 (47 Stat. 564); 25 U.S.C. 386(a) no assessment shall be made on behalf of construction costs against Indian-owned land within the project until the Indian title thereto has been extinguished.

§138.5 Assessments after the Indian title has been extinguished.

Indian-owned lands passing to non-Indian ownership shall be assessed for construction costs and the first assessment shall be due on December 31 of the year that Indian title is extinguished. Assessments against this land will be at the annual rate of $0.42 per acre and shall be due as provided in §138.3, and payable promptly thereafter until the total construction cost of $16.7535 per acre chargeable against the land has been paid in full.

PART 139—REIMBURSEMENT OF CONSTRUCTION COSTS, WAPATO-SATUS UNIT, WAPATO INDIAN IRRIGATION PROJECT, WASHINGTON

Sec.

139.1 Construction costs and assessable acreage.
139.2 Repayment of construction costs.
139.3 Payments.
139.4 Deferment of assessments on lands remaining in Indian ownership.
139.5 Assessments after the Indian title has been extinguished.

AUTHORITY: Sec. 1, 41 Stat. 409, 45 Stat. 210; 25 U.S.C. 386, 387.

SOURCE: 28 FR 6536, June 26, 1963, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 139.1 Construction costs and assessable acreage.

The construction program has been completed on the Wapato-Satus Unit of the Wapato Indian Irrigation Project, and the construction costs have been established by Designation Report dated August 1962 as $7,903,823.12 for the project and $1,499,073.62 for the ''B'' lands share of the construction costs in the Bureau of Reclamation reservoirs on the Yakima River. The area benefited by this development has been established at 136,559.59 acres divided into 79,025.68 acres of ''A'' land and 57,533.91 acres of ''B'' land. Under the requirements of the acts of February 14, 1920 (41 Stat. 409), and March 7, 1928 (45 Stat. 210), these costs are to be repaid to the U.S. Treasury by the owners of the lands benefited.

§ 139.2 Repayment of construction costs.

The cost per acre of the construction under § 139.1 is, therefore, calculated at $57.8782 for ''A'' lands and $83.9337 for ''B'' lands in non-Indian ownership as established by Designation Report dated August 1962. Under the provisions of the acts cited in § 139.1 the annual per acre assessment for forty equal annual payments, is hereby fixed at $1.45 per acre for ''A'' lands and $2.10 per acre for ''B'' lands for the year 1962 and each succeeding year, until the entire cost for each tract shall have been repaid to the U.S. Treasury. On those tracts where payments have been made pursuant to uncodified special regulations, annual assessments beginning with the year 1962 at the rate of $1.45 per acre for ''A'' lands and $2.10 per acre for ''B'' lands will be made until the entire cost of $57.8782 per acre for ''A'' lands and $83.9337 per acre for ''B'' lands shall have been repaid to the U.S. Treasury. Landowners may pay at any time the total of the then remaining indebtedness. Under the act of March 10, 1928 (45 Stat. 210), the unpaid charges stand as a lien against the lands until paid.

§ 139.3 Payments.

Payments are due on December 31 of each year and shall be made to the official in charge of collections for the project.

§ 139.4 Deferment of assessments on lands remaining in Indian ownership.

In conformity with the act of July 1, 1932 (47 Stat. 564; U.S.C. 386(a)), no assessment shall be made on behalf of construction costs against Indian-owned land within the project until the Indian title thereto has been extinguished.

§ 139.5 Assessments after the Indian title has been extinguished.

Indian-owned lands passing to non-Indian ownership shall be assessed for construction costs and the first assessment shall be due on December 31 of the year that the Indian title is extinguished. The construction costs against this land will be established as provided by section 5 of the act of September 26, 1961 (75 Stat. 680). The annual per acre assessment rate will be determined by dividing the established construction cost per acre into forty equal payments. ''B'' lands will also be assessed for reservoir construction costs in the annual per-acre rate as established in the Designation Report dated August 1962. Assessments against this land will continue until the entire established construction costs shall have been repaid to the U.S. Treasury. Landowners may pay at any time the total of the then remaining indebtedness. Under the act of March 10, 1928 (45 Stat. 210), the unpaid charges stand as a lien against the lands until paid.

PART 140—LICENSED INDIAN TRADERS

Sec.

140.1 Sole power to appoint.
140.2 Presidential prohibition.
140.3 Forfeiture of goods.
140.5 Bureau of Indian Affairs employees not to contract or trade with Indians except in certain cases.
140.9 Application for license.
140.11 License period.
140.12 License renewal.
140.13 Power to close unlicensed stores.
140.14 Trade limited to specified premises.

140.15 License applicable for trading only by original licensee.
140.16 Trade in annuities or gratuities prohibited.
140.17 Tobacco sales to minors.
140.18 Intoxicating liquors.
140.19 Drugs.
140.21 Gambling.
140.22 Inspection of traders' prices.
140.23 Credit at trader's risk.
140.24 Cash payments only to Indians.
140.25 Trade in antiquities prohibited.
140.26 Infectious plants.

AUTHORITY: Sec. 5, 19 Stat. 200, sec. 1, 31 Stat. 1066 as amended; 25 U.S.C. 261, 262; 94 Stat. 544, 18 U.S.C. 437; 25 U.S.C. 2 and 9, and 5 U.S.C. 301, unless otherwise noted.

SOURCE: 22 FR 10670, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

CROSS REFERENCES: For law and order regulations on Indian Reservations, see part 11 of this chapter. For regulations pertaining to business practices on Navajo, Hopi and Zuni reservations, see part 141 of this chapter. For additional regulation of certain employees trading with Indians, see 43 CFR part 20.735–28 and 29.

§140.1 Sole power to appoint.

The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes. Any person desiring to trade with the Indians on any reservation may, upon establishing the fact, to the satisfaction of the Commissioner of Indian Affairs, that he is a proper person to engage in such trade, be permitted to do so under such rules and regulations as the Commissioner of Indian Affairs may prescribe.

§140.2 Presidential prohibition.

The President is authorized, whenever in his opinion the public interest may require, to prohibit the introduction of goods, or of any particular articles, into the country belonging to any Indian tribe, and to direct that all licenses to trade with such tribe be revoked, and all applications therefor rejected. No trader shall, so long as such prohibition exists, trade with any Indians of or for said tribe.

(R.S. 2132; 25 U.S.C. 263)

§140.3 Forfeiture of goods.

Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without a license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of $500: *Provided,* That this section shall not apply to any person residing among or trading with the Choctaws, Cherokee, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes: *And provided further,* That no white person shall be employed as a clerk by any Indian trader, except as such trade with said Five Civilized Tribes, unless first authorized so to do by the Commissioner of Indian Affairs.

(R.S. 2133, as amended; 25 U.S.C. 264)

§140.5 Bureau of Indian Affairs employees not to contract or trade with Indians except in certain cases.

(a) Definitions of terms as used in this part:

(1) ''Indian'' means any member of an Indian tribe recognized as eligible for the services provided by the Bureau of Indian Affairs who is residing on a Federal Indian Reservation, on land held in trust by the United States for Indians, or on land subject to a restriction against alienation imposed by the United States. The term shall also include any such tribe and any Indian owned or controlled organization located on such a reservation or land.

(2) ''Bureau'' or the ''Bureau of Indian Affairs'' means the Bureau of Indian Affairs and the Office of the Assistant Secretary for Indian Affairs, both in the Department of the Interior.

(3) ''Employee'' means an officer, employee, or agent of the Bureau of Indian Affairs.

(4) ''Secretary'' means the Secretary of the Interior.

(5) ''Contract'' means any agreement made or under negotiation with any Indian for the purchase, transportation or delivery of goods or supplies.

(6) ''Trading'' means buying, selling, bartering, renting, leasing, permitting and any other transaction involving the acquisition of property or services.

(7) ''Commercial trading'' means any trading transaction where an employee engages in the business of buying or

selling services or items which he/she is trading.

(b) With the exceptions provided in subsection (b) of section 437 of title 18 U.S. Code, section 437 provides that whoever, being an officer, employee, or agent of the Bureau of Indian Affairs, has (other than as a lawful respresentative of the United States) any interest, in such officer, employee, or agent's name, or in the name of another person where such officer, employee, or agent benefits or appears to benefit from such interest:

(1) In any contract made or under negotiation with any Indian, for the purchase, transportation or delivery of goods or supplies for any Indian, or

(2) In any purchase or sale of any service or real or personal property (or any interest therein) from or to any Indian, or colludes with any person attempting to obtain any such contract, purchase, or sale, shall be fined not more than $5,000 or imprisoned not more than six months or both, and shall be removed from office, notwithstanding any other provision of law concerning termination from Federal employment.

(c) The further subsections of this section authorize certain employees contracting and trading with Indians as authorized by the exceptions in section 437 of title 18 U.S. Code. All such contracting and trading is subject to the express provision of section 437 that none of the sales or purchases so authorized may be made if the purpose of any such sale, trade, or purchase is that of commercially selling, reselling, trading, or bartering such property.

(d)(1) Under authority granted by section 437(b)(1) of title 18 U.S. Code, employees of the Bureau of Indian Affairs may with the approval of an authorized officer of the Bureau, as designated in paragraph (d)(2) of this section, purchase from or sell to an Indian any service or any real or personal property, not held in trust by the United States or subject to a restriction against alienation imposed by the United States, or any interest in such property. In addition, employees may purchase from Indians without approval from an authorized officer of the Bureau any non-trust or unrestricted personal property for home use or consumption the value of which property does not exceed $1000. Where the purchase or sale price is less than $1,000, employees may also purchase motor vehicles for their personal use from Indians or sell their personal motor vehicles to Indians without obtaining approval of such purchases or sales from an authorized officer of the Bureau. Approval must be obtained if the purchase or sale price is $1,000 or more.

(2) As used in paragraph (d)(1) of this section an authorized officer of the Bureau of Indian Affairs for employees on reservations and in agencies or in field service units shall be the superintendent or other officer in charge of the unit in which the employee is employed. The authorized officer for the superintendent or officer in charge is his or her immediate supervisor. The authorized officer for employees in area offices is the Area Director, and the authorized officer for an Area Director is his or her immediate supervisor. The authorized officer for employees in the Central Office is the Deputy Assistant Secretary—Indian Affairs (Operations).

(e) No employee of the Bureau of Indian Affairs may have any interest in any purchase or sale involving property or funds which are either held in trust by the United States for Indians or which are purchased, sold, utilized, or received in connection with a contract or grant to an Indian from the Bureau if such employee is employed in the office or installation of the Bureau which recommends, approves, executes, or administers such transaction, grant, or contract on behalf of the United States, except that, as authorized by section 437(b)(1) of title 18 U.S. Code an employee of the Bureau may have such an interest if such purchase or sale is approved by an authorized officer of the Bureau, as designated in paragraphs (e) (3) to (5) of this section, and the conditions in (e) (1) and (2) of this section are satisfied to the extent to which they are applicable to the transaction concerned:

(1) The coveyance or granting of any interest in property held in trust or subject to restriction against alienation imposed by the United States is otherwise authorized by law.

(2) Trading by employees with Indians which involves property or funds which are either held in trust by the United States or are subject to restrictions against alienation imposed by the United States must be conducted on the basis of sealed bid or public auction. If the trading involves leases or sales of trust or restricted Indian land it must be conducted on the basis of sealed bids. Such requirements for sealed bid or public auction may only be waived by the Assistant Secretary for Indian Affairs on the basis of a full report showing:

(i) The need for the transaction,

(ii) The benefits accruing to both parties,

(iii) That the consideration for the proposed transaction shall be not less than the fair market value of the trust or restricted property or interest therein, unless the employee is involved in a transaction in accordance with § 152.25(c) or (d) or § 162.5(b)(1), (2), or (3) of this title or the employee is the recipient of a benefit for tribal members for which a uniform charge to all members is made, and

(iv) An affidavit as follows shall accompany each proposed transaction: ''I (name) (title), swear (or affirm) that I have not exercised any undue influence nor used any special knowledge received by reason of my employment in the Bureau in obtaining the (grantor's, purchaser's, vendor's) consent to the instant transaction.''

(3) The authorized officer of the Bureau for employees employed on reservations, in agencies or service units is one who is not a relative by blood or marriage of the employee, and is not employed at the employee's reservation, agency or service unit. That officer must also be employed at not less than one grade level higher than such employee at the Wahington, District of Columbia, Central Office or at an Area Office other than that with authority over the employee's reservation, agency, or service unit.

(4) The authorized officer of the Bureau for employees employed in Area offices is one who is not a relative by blood or marriage of the employee, is not employed at the employee's area office, and must be employed at not less than one grade level higher than the employee at the Washington, District of Columbia, Central Office.

(5) The authorized officer of the Bureau for employees employed at the Washington, District of Columbia, Central Office is the Secretary.

(f) Except as provided in subsection (b)(2) of section 437 of title 18 U.S. Code as implemented by this section, nothing in the cited law shall be construed as preventing any employee of the Bureau who is an Indian, of whatever degree of Indian blood, from obtaining or receiving any benefit or benefits made available to Indians generally or to any member of his or her particular tribe, under any Act of Congress, nor to prevent any such employee who is an Indian from being a member of or receiving benefits by reason of his or her membership in any Indian tribe, corporation, or cooperative association organized by Indians, when authorized under such rules and regulations as the Secretary or his/her designee has prescribed or shall prescribe.

[49 FR 25434, June 21, 1984]

§ 140.9 Application for license.

(a) Application for license must be made in writing on Form 5–052, setting forth the full name and residence of the applicant; if a firm, the firm name and the name of each member thereof; the place where it is proposed to carry on the trade; the capital to be invested; the names of the clerks to be employed; and the business experience of the applicant. The application must be forwarded through the Superintendent to the Commissioner of Indian Affairs, accompanied by two satisfactory testimonials on Form 2–077 as to the character of the applicant and his employees and their fitness to be in the Indian country, and by an affidavit of the Superintendent on Form 5–053 that neither he nor any person for him has any interest, direct or indirect, present or prospective, in the proposed business or the profits arising therefrom, and that no arrangement for any benefit to himself or to any other person on his behalf is contemplated in case the license is granted. Licensed traders will be held responsible for the conduct of their employees.

(b) Itinerant peddlers or purveyors of foodstuffs and other merchandise shall

be considered as traders and shall obtain a license or permit from the Superintendent setting forth the class of trade or peddling to be carried on, furnishing such character or credit references, or both, as may be required by the Superintendent. The period of the license for such itinerant peddlers shall be determined by the Superintendent.

(c) When a license or permit to trade is issued under the regulations in this part 140, a fee of $5, payable when the license is issued, shall be levied against the licensee.

[30 FR 8267, June 29, 1965. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 140.11 License period.

Licenses to trade shall not be issued unless the proposed licensee has a right to the use of the land on which the business is to be conducted. The license period shall correspond to the period of the lease or permit held by the licensee on restricted Indian land, except that where the proposed licensee is the owner or beneficial owner or holds a use right to the land on which the business is to be conducted, the license period shall be fixed by the Commissioner of Indian Affairs or his authorized representative, but in no case shall the license period exceed 25 years.

[30 FR 8268, June 29, 1965. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 140.12 License renewal.

Application for renewal of license must be made to the Commissioner of Indian Affairs on Form 5-054, through the superintendent, at least 30 days prior to the expiration of the existing license, and the superintendent must report as to the record the applicant has made as a trader and his fitness to continue as such under a new license.

§ 140.13 Power to close unlicensed stores.

If persons carry on trade within a reservation with the Indians without a license, or continue to trade after expiration of the license without applying for renewal, the superintendent will immediately report the facts in the case to the Commissioner of Indian Affairs, who may, if necessary, direct the superintendent to close the stores of such traders.

§ 140.14 Trade limited to specified premises.

No trade with Indians is permitted at any other place than that specified in the license. Licenses to not cover branch stores. A separate license and bond must be furnished for each such store. The business of a licensed trader must be managed by the bonded principal, who must habitually reside upon the reservation, and not by an unbonded subordinate.

§ 140.15 License applicable for trading only by original licensee.

No trader will be allowed to lease, sublet, rent, or sell any of the buildings which he occupies, for any purpose to any other person or concern, without the approval of the Commissioner of Indian Affairs. A license to trade with Indians does not confer upon the trader any right or privileges in respect to the herding or raising of livestock upon the reservation. The use of reservation lands, whether tribal or allotted, for such purposes can be obtained by a trader only upon the terms and under the restrictions which apply to other persons. His license gives him no advantage over others in this respect.

§ 140.16 Trade in annuities or gratuities prohibited.

Traders are forbidden to buy, trade for, or have in their possession any annuity or other goods of any description which have been purchased or furnished by the Government for the use or welfare of the Indians. Livestock or their increase purchased by the Government and in possession or control of the Indians may not be purchased by any trader, not a member of the tribe to which the owners or possessors of the cattle belong, except with the written consent of the agent of said tribe.

§ 140.17 Tobacco sales to minors.

No trader shall sell tobacco, cigars, or cigarettes to any Indian under 18 years of age.

§ 140.18 Intoxicating liquors.

No trader shall use or permit to be used his premises for any unlawful conduct or purpose whatsoever. No trader shall use of permit to be used any part of his premises for the manufacture, sale, gift, transportation, drinking or storage of intoxicating liquors or beverages in violation of existing laws relating thereto. Violation of this section will subject the trader to criminal prosecution, revocation of license and such other action as may be necessary.

§ 140.19 Drugs.

Traders shall not keep for sale, or sell, give away, or use any opium, chloral, cocaine, peyote or mescal bean, hashish or Indian hemp or marihuana, or any compound containing either ingredient, and for violation hereof the trader's license shall be revoked.

§ 140.21 Gambling.

Gambling, by dice, cards, or in any way whatever, is strictly prohibited in any licensed trader's store or on the premises.

§ 140.22 Inspection of traders' prices.

It is the duty of the superintendent to see that the prices charged by licensed traders are fair and reasonable. To this end the traders shall on request submit to the superintendent or inspecting officials the original invoice, showing cost, together with a statement of transportation charges, retail price of articles sold by them, the amount of Indian accounts carried on their books, the total annual sales, the value of buildings, livestock owned on reservation, the number of employees, and any other business information such officials may desire. The quality of all articles kept on sale must be good and merchantable.

§ 140.23 Credit at trader's risk.

Credit given Indians will be at the trader's own risk, as no assistance will be given by Government officials in the collection of debts against Indians. Traders shall not accept pawns or pledges of personal property by Indians to obtain credit or loans.

§ 140.24 Cash payments only to Indians.

Traders must not pay Indians in tokens, tickets, store orders, or anything else of that character. Payment must be made in money, or in credit if the Indian is indebted to the trader.

§ 140.25 Trade in antiquities prohibited.

Traders shall not deal in objects of antiquity removed from any historic or prehistoric ruin or monument on land owned or controlled by the United States.

CROSS REFERENCE: For additional regulations pertaining to preservation of antiquities, see part 261 of this chapter. For regulations of the Bureau of Land Management regarding antiquities, see 43 CFR part 3.

§ 140.26 Infectious plants.

Traders shall not introduce into, sell, or spread within Indian reservations any plant, plant product, seed, or any type of vegetation, which is infested, or infected or which might act as a carrier of any pests of infectious, transmissible, or contagious diseases, as determined by the laws and regulations of the State for plant quarantine and pest control. For the purpose of enforcement of this provision State officers may enter Indian reservations, with the consent of the superintendent, to inspect the premises of such traders and otherwise to execute such State laws and regulations.

PART 141—BUSINESS PRACTICES ON THE NAVAJO, HOPI AND ZUNI RESERVATIONS

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AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9.

SOURCE: 40 FR 39835, Aug. 29, 1975, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

Subpart A—Interpretation and Construction Guides

§ 141.1 Purpose.

The purpose of the regulations of this part is to prescribe rules for the regulation of reservation businesses for the protection of Indian consumers on the Navajo, Hopi and Zuni Reservations as required by 25 U.S.C. 261, 262, 263, and 264.

§ 141.2 Scope.

The regulations of this part apply to all non-members of the Navajo, Hopi and Zuni Tribes, who engage in retail businesses on the above respective reservations. These regulations do not apply to businesses that are wholly owned and operated by either the Navajo, Hopi or Zuni Tribes, or by individual tribal members within their respective reservations.

[45 FR 64906, Oct. 1, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 141.3 Definitions.

For the purposes of this part—

(a) ''Annual percentage rate'' means the annual percentage rate of finance charge determined in accordance with 12 CFR 226.5, which defines annual percentage rates.

(b) ''Consumer credit transaction'' means a grant of credit or a loan that is made by a person regularly engaged in the business of making loans or granting credit primarily for a personal, family, household, or agricultural purpose.

(c) ''Draft'' means a writing that is a direction to pay that:

(1) Identifies the person to pay with reasonable certainty;

(2) Is signed by the drawer;

(3) Contains an unconditional order to pay a sum certain in money and no other promise, order, obligation or power given by the drawer;

(4) Is payable on demand or at a definite time; and

(5) Is payable to order.

(d) ''Finance charge'' means the cost of credit determined in accordance with 12 CFR 226.4, which defines ''finance charge''.

(e) ''Firm'' means a corporation or a partnership.

(f) ''Gross receipts'' include the following:

(1) All cash received from the conduct and operation of the licensee's business at the premises described in the application for license.

(2) Receipts from both wholesale and retail transactions.

(3) Receipts resulting from transactions concluded off the reservation that originate from the conduct and operation of the licensee's business on the reservation.

(4) The market value of all property taken in trade on the date when received and either held by the licensee for purposes other than resale or credited on any account in payment for merchandise.

(5) Proceeds from the sale of any goods bought from Indians regardless of where the sale takes place.

(6) Finance charge received on loans, but not the return of principal.

(g) ''Open end credit'' means consumer credit transactions made on an account by a plan under which:

(1) The creditor may permit the customer to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide;

(2) The customer has the privilege of paying the balance in full or in installments; and

(3) A finance charge may be computed by the creditor from time to time on an outstanding unpaid balance.

(h) ''Pawnbroker'' means a person whose business includes lending money secured by personal property deposited with the lender.

(i) ''Peddler'' means a person who offers goods for sale within the exterior boundaries of the Hopi, Navajo or Zuni Reservations, but does not do business from a fixed location or site on any of those reservations.

(j) ''Person'' includes a natural person, a corporation, trust, estate, partnership, cooperative or association.

(k) ''Replacement value'' means the present cost to the owner of replacing an item with one having the same quality and usefulness.

(l) ''Reservation business'' means a person that engages at a fixed location or site within the exterior boundaries of the Navajo, Hopi or Zuni Reservations in the sale or purchase of goods or services or in consumer credit transactions with Indians and is not a bank, saving bank, trust company, savings or building and loan association or credit union operating under the laws of the United States or the laws of New Mexico, Arizona or Utah, a business on the Hopi Reservation that is wholly owned and operated by members of the Hopi Tribe, or a business on the Zuni Reservation that is wholly owned and operated by members of the Zuni Tribe.

§ 141.4 Interpretation and construction.

(a) ''Area Director'' refers to the Area Director of the Bureau of Indian Affairs or the Administrator of the Joint Use Area of the Bureau of Indian Affairs who has jurisdiction over the land on which a person does business or intends to do business with Indians.

(b) ''Commissioner'' refers to the Commissioner of Indian Affairs or a person to whom the Commissioner of Indian Affairs has delegated authority under this part or under 25 U.S.C. 261, 262, 263, or 264.

(c) ''Superintendent'' refers to the Superintendent of the Bureau of Indian Affairs who has jurisdiction over the land on which a person does business or intends to do business with Indians.

(d) ''Tribe'' refers to the tribe that has jurisdiction over the land on which a person does business or intends to do business with Indians.

Subpart B—Licensing Requirements and Procedures

§ 141.5 Reservation business license required.

(a) No person may own or lease a reservation business without a license issued under the provisions of this subpart.

(b) The applicant shall apply in writing on a form provided by the Commissioner setting forth the following:

(1) The full name and residence of the applicant.

(2) Three (3) responsible references.

(3) The firm name and the name of each member of the board of directors if the applicant is a firm.

(4) Satisfactory evidence as to the character, experience and business ability of the applicant and the employees of the applicant.

(5) Satisfactory evidence of the general fitness of the applicant and employees of the applicant to reside on the Indian reservation.

(c) Upon the request of the Commissioner, the applicant shall furnish the following:

(1) The capital invested or to be invested and, of this, the amount of capital owned and the amount borrowed or to be borrowed.

(2) The name of the lender of any borrowed capital, the date due, the rate of interest to be paid, and the names of any endorsers and security.

(3) A copy of any contract or trade agreement whether oral or written with creditors or financing individuals or institutions, including any stipulations whereby financing fees are to be paid.

(d) Information that if released might adversely affect the competitive position of the applicant shall remain confidential.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 141.6 Approval or denial of license application.

(a) The Commissioner shall approve or deny each license application and notify the applicant no later than thirty (30) days after receipt of a completed application.

(b) No application is complete until any clearance or tribal council approval required by tribal or Federal regulations has been obtained.

(c) The Commissioner may not deny a license to an applicant for the purpose of limiting competition.

(d) If the application is approved the license shall be issued on a form provided by the Commissioner.

(e) If the Commissioner denies the license application the applicant may appeal under the provisions of part 2 of this title no later than thirty (30) days after the date on which notice of denial of the application was sent.

§ 141.7 Bond requirement for a reservation business.

(a) An applicant for a license or renewal of a license to operate a reservation business shall at the time the application is submitted furnish a bond on a form provided by the Commissioner in the name of the applicant in the amount of ten thousand dollars ($10,000) or such larger sum as the Commissioner may designate, with two (2) on more sureties approved by the Commissioner or with a guaranty company qualified under the Act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6–13). The bond shall be for the same period covered by the license. No licensee may trade without a bond. Except as provided in paragraph (d) of this section, no surety may be released from liability until the license expires.

(b) The bond shall be in favor of the United States for the benefit of the United States and any customer of the licensee who recovers a judgment for damages resulting from violation of any law or regulation affecting or relating to reservation businesses. Any customer who recovers such a judgment may bring suit on the bond in his or her own name. The bond shall be conditioned on payment by the licensee of all judgments for damages resulting from violations of the regulations of this part.

(c) Any surety for a reservation business on the Hopi or Zuni Reservation shall agree in writing to submit itself voluntarily to the jurisdiction of the tribal court for the purpose of adjudicating any claim arising under the bond.

(d) Any surety on the bond of a licensed reservation business may be relieved from liabilities by complying with the provisions of § 141.57 of this title.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 22937, June 8, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 141.8 License period for reservation businesses.

A license to operate a reservation business may not be issued unless the applicant has a right to use the land on which the business is to be conducted. The license period shall correspond to the period of the lease held by the licensee. The license period in no event may exceed twenty-five (25) years.

§ 141.9 Application for license renewal.

(a) An applicant for renewal of the license to trade shall file an application on a form provided by the Commissioner with the Area Director not less than three (3) months prior to the expiration of the existing license. The Area Director shall report in writing to the Commissioner on the record the applicant has made as a reservation business owner and the applicant's present fitness to reside on the Indian reservation.

(b) The Commissioner may issue a temporary permit for three (3) months pending consideration of application for license renewal.

(c) Prior to expiration of the existing license or, if issued, the temporary permit, the Commissioner shall approve or deny the application for license renewal and notify the applicant.

(d) No license may be renewed until any clearance or tribal council approval required by tribal or other federal regulations has been obtained.

(e) If the Commissioner denies the application for renewal, the applicant may appeal under the provisions of part 2 of this title.

§ 141.10 License fees for reservation businesses.

(a) Prior to the issuance of an initial license, each licensee who is not a member of the Navajo tribe shall pay the following amount:

(1) If the license is issued before July 1, the licensee shall pay fifty dollars ($50).

(2) If the license is issued on or after July 1, the licensee shall pay twenty-five dollars ($25).

(b) Each licensed business owner who is not a member of the Navajo tribe shall pay on or before January 10 of each year an annual license fee determined as follows based on the licensee's most recent annual report:

(1) If the licensee's gross receipts are less than one hundred thousand dollars ($100,000) for the year or the licensee has not yet been required to file its first annual report, the license fee is fifty dollars ($50).

(2) If the licensee's gross receipts for the year are at least one hundred thousand dollars ($100,000) but not more than four hundred and ninety-nine thousand nine hundred and ninety-nine dollars ($499,999) the fee is one hundred dollars ($100).

(3) If the licensee's gross receipts for the year are at least five hundred thousand dollars ($500,000) but not more than seven hundred and forty-nine thousand nine hundred and ninety-nine dollars ($749,999), the fee is two hundred dollars ($200).

(4) If the licensee's gross receipts for the year are seven hundred fifty thousand dollars ($750,000) or more, the fee is three hundred dollars ($300).

(c) The Navajo Area Director shall determine the annual license fee payable by licensees who are enrolled members of the Navajo Tribe. The license fee for an enrolled member of the Navajo Tribe may not be less than twenty percent (20%) nor greater than one hundred percent (100 percent) of the amount the licensee would be required to pay if the licensee were not a tribal member.

(d) All fees are payable to the Area Director and shall be deposited to the credit of the account ''Special Deposits.''

[40 FR 39835, Aug. 29, 1975, as amended at 59 FR 54502, Oct. 31, 1994]

§ 141.11 Tribal fees, taxes, and enforcement.

(a) The regulations in this part do not preclude the Hopi, Navajo, or Zuni

tribal councils from assessing and collecting such fees or taxes as they may deem appropriate from reservation businesses.

(b) Nothing in the regulations of this part may be construed to preclude tribal enforcement of these regulations or consistent tribal ordinances.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 141.12 Peddler's permits.

(a) Except as provided in paragraph (b) of this section, no peddler may offer goods for sale within the exterior boundaries of the Hopi, Navajo, or Zuni reservations without a peddler's permit. The permit shall state on its face the class of goods that may be offered for sale. No peddler may offer for sale any class of goods other than those listed on the face of the permit.

(b) No peddler who is an enrolled member of a federally recognized Indian tribe is required to obtain a peddler's permit for offering to sell the following items:

(1) Coal and wood for non-commercial use,

(2) Homegrown fresh products,

(3) Meat products raised locally by the peddler, or

(4) Arts and crafts made by the peddler or the peddler's family.

(c) The applicant shall apply for a permit in writing on a form provided by the Commissioner.

(d) Peddlers shall pay such fee and post such surety bond on a form provided by the Commissioner as the Commissioner requires. The surety bond required may not be less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000).

(e) Any surety on the bond of a peddler may be relieved of liability by complying with the provisions of § 141.57.

(25 U.S.C. 261 et seq.)

[43 FR 27826, June 27, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 141.13 Amusement company licenses.

(a) No person may operate a portable dance pavilion, mechanical amusement device such as a ferris wheel or carousel, or commercial games of skill within the exterior boundaries of the Navajo, Hopi, or Zuni Reservations without a license from the Commissioner.

(b) The licensee shall pay such fee as the Commissioner requires. The fee shall be not less than five dollars ($5) nor more than twenty-five dollars ($25) per unit.

(c) The licensee shall post a surety bond on a form provided by the Commissioner in an amount not exceeding ten thousand dollars ($10,000) and a personal injury and property damage liability bond of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000) as may be required by the Commissioner.

(d) The provisions of this section do not apply to amusement companies where the contract between the tribe and the amusement company provides for the payment of a fee to the tribe and for the protection of the public against personal injury and property damage by bond in the amounts specified in paragraph (c) of this section.

(e) Any surety on a bond under this section may be relieved of liability by complying with the provisions of § 141.57.

§ 141.14 Trade in livestock restricted.

(a) No person other than an enrolled member of the tribe or any association, partnership, corporation or business entity wholly owned by enrolled members of the tribe may purchase livestock from tribal members without a special permit issued by the Commissioner.

(b) The Commissioner shall issue a permit to each applicant who establishes to the Commissioner's satisfaction that the applicant is a fit person to engage in the purchase of livestock and who posts a bond on a form provided by the Commissioner in the amount of ten thousand dollars ($10,000). This paragraph does not require a person who has posted a bond of ten thousand dollars ($10,000) or more under other provisions of this part to post an additional bond to obtain a permit under this section.

(c) Any surety on a bond under this section may be relieved of liability by complying with the provisions of § 141.57.

(d) The provisions of this section do not apply to purchases of livestock made at an organized public auction.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 22937, June 8, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 141.15 Consent to jurisdiction of Hopi and Zuni tribal courts.

As a condition to doing business on the Hopi or the Zuni Reservation each applicant for license under this part shall, in accordance with the constitutions of those tribes, voluntarily submit the applicant and the applicant's employees or agents to the jurisdiction of the tribal court for the purpose of the adjudication of any dispute, claim or obligation arising under tribal ordinance relating to commerce carried out by the licensee.

Subpart C—General Business Practices

§ 141.16 Price marking.

The price of each article offered for sale shall be marked on the article, its containers or in any other manner that is plain and visible to the customer and that affords the customer a reasonable opportunity to learn the price of the article prior to purchase.

§ 141.17 Health and sanitation requirements.

(a) Each licensee shall keep both the premises and the place of business in a clean and sanitary condition at all times and shall avoid exposure of foodstuffs to contamination. No licensee may offer for sale any goods that are banned for health or sanitation reasons from retail sale by any Federal agency or by the tribe or, where not in conflict with the tribal regulations, by the State or by any State agency. No licensee may knowingly offer for sale any food that is contaminated.

(b) All weights and measure shall conform to standards set by the National Bureau of Standards and to standards, if any, set by the tribe and, if not in conflict with tribal regulations, to the standards set by the State.

(c) If training in foodhandling is available from the Indian Health Service, each person working in a reservation business shall complete the foodhandler training offered by the Indian Health Service before handling any food sold by a reservation business.

(d) Any person whom the Service Unit Director of the Indian Health Service determines is infected with or is a carrier of any communicable disease in a stage likely to be communicable to persons exposed as a result of the infected employee's normal duties as a foodhandler may not be employed by a reservation business.

(e) Each business shall comply with all Federal health regulations and with all tribal health regulations that are consistent with Federal regulations. Each business shall comply with State health regulations that are consistent with tribal and Federal health regulations.

(f) Except as otherwise provided herein, nothing in this section may be construed as a grant of enforcement powers to any agency of a State or its subdivisions.

(g) It is the duty of the health officers of the Indian Health Service to make periodic inspections, recommend improvements, and report thereon to the Commissioner.

§ 141.18 Availability of employee authorized to transact business.

Each licensee shall provide during normal business hours an employee authorized in writing to engage in all business transactions that the licensee normally offers to customers.

§ 141.19 Check cashing.

(a) A reservation business may give a fully negotiable check in addition to U.S. currency when cashing a draft, check or money order. A reservation business may not give scrip, credit or other substitute for U.S. currency when cashing a draft, check or money order.

(b) A reservation business owner or employee may advise a customer cashing checks, money orders or drafts of the amount due on the customer's credit accounts, pawn accounts or any other obligation the customer owes to the business, but in no event may the owner or employee withhold the proceeds of the check, money order or

draft from the customer on the basis of existing credit obligations.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 141.20 Payment for purchase of Indian goods or services.

(a) A reservation business shall pay for the purchase of Indian goods or services with cash or a fully negotiable check. A reservation business may not pay for Indian goods or services with trade slips or future credit. In any transaction involving the purchase of Indian goods on the Navajo Reservation, the reservation business shall furnish a bill of sale indicating the name of the seller, a description of the goods, the amount paid for the goods, the date of sale, and the signature of both parties and shall retain a copy of the bill of sales in its business records.

(b) A reservation business owner or employee may advise a customer selling Indian goods or services of the amount due on the customer's credit accounts, pawn accounts or any other obligation the customer owes to the business, but in no event may the owner or employee withhold the proceeds of the sale from the customer on the basis of existing credit obligations.

§ 141.21 Trade confined to premises.

The licensee shall confine all trade on the reservation to the premises specified in the license, except, where permitted under § 141.14, the buying and selling of livestock and livestock products.

§ 141.22 Subleasing prohibited.

No licensee may lease, sublet, rent, or sell any building that the licensee occupies for any purpose to any person without the approval of the Commissioner and the consent of the tribe.

§ 141.23 Posted statement of ownership.

The licensee of a reservation business shall display in a prominent place a notice that is legible to customers stating the form of the business entity, the names and addresses of all other reservation businesses owned in whole or in part by the business entity, and if the licensee is not a corporation, the names and addresses of the owner or owners of the business. If the licensee is a corporation the notice shall list the names and addresses of the members of the Board of Directors.

§ 141.24 Attendance at semi-annual meetings.

Upon the request of a tribal official designated by the governing body, each licensee shall attend a semi-annual public meeting of a tribal governing body to respond to customer inquiries.

§ 141.25 Withholding of mail prohibited.

No owner or employee of a reservation business may open, withhold, or otherwise delay the delivery of mail.

§ 141.26 Trade in antiquities prohibited.

No licensee may knowingly buy, sell, rent or lease any artifact created before 1930 that was removed from an historic ruin or monument.

§ 141.27 Trade in imitation Indian crafts prohibited.

No person may introduce or possess for disposition or sale within the exterior boundaries of the Hopi, Navajo or Zuni Reservations any object that is represented to be an Indian handicraft unless the object was produced by an Indian or Indians with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual's product.

§ 141.28 Gambling prohibited.

No licensee may permit any person to gamble by dice, cards, or in any way whatever, including the use of any mechanical device, on the premises of any licensed business.

§ 141.29 Political contributions restricted.

No reservation business owner who is ineligible to vote in a Navajo tribal election may grant or donate any money or goods to any candidate for election to Navajo tribal office.

§ 141.30 Retaliation prohibited.

No licensee may refuse service to any customer for the purpose of retaliating against that customer for enforcing or

attempting to enforce the regulations of this part.

§ 141.31 Trade by Indian Affairs employees restricted.

(a) Except as authorized in this section, no person employed by the U.S. Government in Indian Affairs may have any interest in any trade with an Indian or an Indian organization. Employees of the U.S. Government may trade with an Indian or Indian organization for any purpose other than to engage in a profit-making activity under the following conditions:

(1) Where the amount involved is $500 or less a U.S. Government employee may purchase goods or services from an Indian or Indian organization.

(2) Where the amount involved is greater than $500 a U.S. Government employee may, with the approval of the Secretary of the Interior, purchase goods or services from any Indian or Indian organization.

(b) Lease or sale of home sites or allotments on trust or restricted Indian land to or from Indian employees of the U.S. Government shall be made on sealed bids, unless the Commissioner waives this requirement on the basis of a report showing:

(1) The need for the transaction,

(2) The benefits accruing to both parties, and

(3) That the consideration for the proposed transaction is not less than the appraised value of the land or leasehold interest unless the Indian employee qualifies and is intending a transaction in accordance with § 152.5 (b) and (c) of this chapter or § 162.5(b)(1), (2) and (3) of this chapter. An affidavit, as follows, shall accompany each proposed land transaction:

I,_____(Name)

_____(Title)

swear (or affirm) that I have not excercised any undue influence nor used any special knowledge received by reason of my office in obtaining the (grantor's, purchaser's, vendor's) consent to the instant transaction.

(c) This section does not prohibit any reservation business from contracting with the Federal Government to provide postal services to Indian communities in which Government postal service is unavailable.

(d) Nothing in this section prohibits an Indian employee from receiving benefits by reason of membership in a tribe or corporation or cooperative association organized by and operated for Indians.

(e) U.S. Government employees who violate this section are liable to a penalty of five thousand dollars ($5,000) and shall be removed from office, see 25 U.S.C. 68.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

EDITORIAL NOTE: For further information concerning Federal employees contracting or trading with Indians, see Executive Order 12328 of Oct. 8, 1981, at 46 FR 50357, Oct. 13, 1981.

Subpart D—Pawnbroker Practices

§ 141.32 Reservation pawnbroker license required.

(a) No person may accept pawns or pledges of personal property as security for monies or accounts due by an Indian within the exterior boundaries of the Navajo, Hopi or Zuni Reservations unless such person is an agent of a bank, saving bank, trust company, savings or building and loan association, or credit union operating under the laws of the United States or the laws of New Mexico, Arizona, or Utah or unless such person—

(1) Holds a valid license to operate a reservation business,

(2) Holds a valid reservation pawnbroker license, and

(3) Posts a bond on a form provided by the commissioner in the name of the licensee in the amount of twenty-five thousand dollars ($25,000) or such larger sum as may be designated by the Commissioner with two (2) or more sureties approved by the Commissioner or with a guaranty company qualified under the Act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6–13).

(b) An applicant for a reservation pawnbroker license shall apply in writing on a form provided by the Commissioner.

(c) The bond required by paragraph (a) of this section shall be in favor of the United States for the benefits of the customers of the licensee and shall specifically indemnify all customers

who have recovered judgment against the licensee for destroyed, lost, misplaced or misappropriated pawn or other property. Any customer recovering such a judgment may bring suit on the bond in his or her own name. The bond shall be for the same period as the license.

(d) Any surety on a bond under this section may be relieved of liability by complying with the provisions of § 141.57.

(e) No person may accept pawns or pledges of personal property as security for monies or accounts due by an Indian after the effective date of a tribal ordinance banning the acceptance of pawn on the reservation.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976; 41 FR 22937, June 8, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 141.33 Fees for pawnbroker license.

(a) Prior to the issuance of an initial pawnbroker license, each licensee who is not a member of the Navajo Tribe shall pay the following amount:

(1) If the license is issued before July 1, the licensee shall pay two hundred dollars ($200).

(2) If the license is issued on or after July 1, the licensee shall pay one hundred dollars ($100).

(b) Each licensed pawnbroker who is not a member of the Navajo Tribe shall pay on or before January 10 of each year an annual license fee of two hundred dollars ($200).

(c) The Area Director shall determine the annual license fee payable by licensees who are enrolled members of the Navajo Tribe. The license fee for a member of the Navajo Tribe may not be less than twenty percent (20 percent) nor greater than one hundred percent (100 percent) of the amount the licensee would be required to pay if the licensee were not tribal member.

(d) All fees are payable to the Area Director and shall be deposited to the credit of the account ''Special Deposits.''

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982; 59 FR 54502, Oct. 31, 1994]

§ 141.34 Pawnbroker records.

Each pawnbroker shall keep a written record of the following information:

(a) Transaction number.

(b) Name of pledgor.

(c) Address of pledgor.

(d) Census number or social security number of pledgor.

(e) Date of transaction.

(f) Replacement value of pawn.

(g) Description of pawned item.

(h) Amount loaned in cash.

(i) Amount loaned as credit.

(j) Finance charge.

(k) Amount financed.

(l) Date and amount of payments made by pledgor.

(m) Date notice of default sent to pledgor.

(n) Date pawned item sold.

(o) Name and address of purchaser.

(p) Amount received upon sale.

(q) Amount of any surplus returned to the pledgor.

(r) Such other information as the Commissioner may require.

§ 141.35 Pawnbroker disclosure requirements.

In all transactions in which pawn is taken the lender shall give the borrower a written ticket or receipt disclosing the following information to the extent applicable:

(a) Clear identification of the property pledged.

(b) The date of the transaction.

(c) Amount of the loan.

(d) Name and social security or census number of the pledgor.

(e) Replacement value of the pawn as agreed upon by the pledgor and pledgee.

(f) Date on which loan is due.

(g) The amount, expressed as a dollar amount, of any finance charges.

(h) The finance charges expressed as an annual percentage rate and computed in accordance with the provisions of 12 CFR 226.5(b).

(i) The amount, or method of computing the amount, of any charges to be assessed after the date the loan is due.

(j) A statement of the conditions of default and the pledgor's rights upon default, as defined by this part.

(k) Identification of the method of computing any unearned portion of the finance charges in the event of prepayment of the obligation.

§ 141.36 Maximum finance charges on pawn transactions.

No pawnbroker may impose an annual finance charge greater than twenty-four percent (24 percent) of the unpaid balance for the period of the loan nor assess late charges or delinquency charges on any loan.

§ 141.37 Prepayment.

(a) Subject to the provisions of paragraph (b) of this section, the pledgor may prepay in full or in any part the unpaid balance of a loan at any time without penalty.

(b) When a loan is prepaid the lender may collect the earned portion of the finance charge or may charge an administrative fee not to exceed ten percent (10 percent) of the unearned finance charge or two dollars ($2) whichever is greater.

§ 141.38 Pawn loans, period, notice and sale.

(a) The proceeds of all loans secured by pawn and for which a finance charge is imposed shall be paid only in cash or with a fully negotiable check.

(b) The period of all such loans shall be no less than twelve (12) months, subject to the provisions of paragraph (c).

(c) Thirty (30) days prior to the end of the loan period the pledgee may make a declaration of intention to proceed with sale of the pawned item by sending notice of intent to the pledgor.

(d) The notice required in paragraph (c) of this section shall be sent to the pledgor and proof of delivery obtained and shall contain a description of the item pawned, a statement of the principal and finance charge owed, a statement of the intention to sell, the date of the sale, and the procedure for redemption.

(e) Nothing in this section requires the business owner to proceed with notice and sale if the business owner desires to hold the pawn for a period longer than the loan period stated in the original agreement.

(f) Unless notice is given under paragraph (c) of this section, or the loan is refinanced under the provisions of § 141.41, no finance charge may be imposed for the time the loan remains unpaid after the end of the loan period stated on the pawn ticket.

§ 141.39 Sale and redemption of pawn.

(a) If the retention period has expired and notice as required under § 141.38 of this part has been sent and received, the pledgee may proceed with the sale of the pawn.

(b) The pawn shall be sold no sooner than thirty (30) days but no later than twelve (12) months after notice of intent to sell has been given. The sale shall be a public sale, with notice of the time, place, and manner to be given in a tribal newspaper of general circulation not less than fourteen (14) days prior to the sale, or in the absence of such a newspaper, in a commercially reasonable manner. The sale itself shall also be conducted in a commercially reasonable manner.

(c) A pledgor may redeem pawn which has been put up for sale at any time before the day it is to be sold by tendering to the pledgee the face amount of the loan, plus the finance charge assessed on the original loan. The pledgee may also collect an additional charge covering the period between the date due and the date of redemption, provided that the rate of charge does not exceed the finance charge on the original loan.

(d) The pledgee may buy at the pledgee's own sale if the collateral is of a type customarily sold in a recognized market or which is the subject of widely distributed standard price quotations.

(e) Pawn held for more than twelve (12) months after notice of intent to sell has been given may not be sold, but the pledgor may redeem the pawn at any time by tendering to the pledgee the face amount of the loan, plus the finance charge that accrued before the end of the sale period provided in paragraph (b) of this section.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 141.40 Proceeds of sale.

(a) The following items shall be deducted from the proceeds of the sale of

pawned items in the following order of priority:

(1) The expense of advertising and conducting the sale, not to exceed ten percent (10%) of the amount loaned.

(2) The principal amount of the loan, plus any accrued finance charges.

(3) The finance charge calculated at the annual percentage rate of the original loan on the unpaid balance of the loan for the period from the date of default to the date of sale.

(b) Within ten (10) days after the sale of the pledge under this section, the pledgee shall send a notice to the pledgor informing the pledgor of the date of the sale, the proceeds of the sale, the allowable costs of the sale, any additional finance charges, and the amount of any surplus realized. The pledgee shall obtain proof that the notice was delivered.

(c) Any proceeds of the sale remaining after the deductions authorized in paragraph (a) of this section are deemed to be ''surplus'' and shall be paid over to the pledgor or the pledgor's estate in U.S. currency.

(d) The sale of pledged goods and the application of the proceeds in accordance with this section extinguishes all rights of action of the pledgee for any unpaid principal or finance charge on the original loan.

§ 141.41 Refinancing transaction.

(a) Any pawn agreement may be refinanced, either with or without an increase in the principal amount of the loan, prior to or following the date of expiration of the original period of the loan upon agreement between the parties.

(b) Such refinancing constitutes a new transaction for purposes of all disclosure and record keeping requirements of this part and requires the issuance of a new ticket or receipt.

(c) The rate of the additional finance charge imposed as part of the refinancing agreement may not exceed the maximum rate imposed by § 141.36.

(d) The total finance charges in a refinancing agreement may not exceed the sum of the following amounts:

(1) The finance charge that the pledgor would have been required to pay upon prepayment on the date of refinancing under § 141.37 of this part, except that, for the purpose of computing this amount, no minimum finance charge or administrative fee may be included, and

(2) Such additional finance charge as is permissible on the balance of the loan over the remaining period of the loan as extended.

(e) The default and sale procedures of this part apply to a refinanced pawn transaction in the same manner as they apply to an original pawn transaction.

§ 141.42 Lost pawn receipts or tickets.

(a) Redemption may not be denied on the sole ground that the pledgor is unable to produce a receipt or pawn ticket, provided the pledgor gives a reasonable description of the pawned item or makes an actual identification of the item. The pledgee may require the pledgor to sign a receipt for the redeemed pawn. No person other than the pledgor may redeem pawn without a ticket.

(b) No additional charges may be imposed for the loss of a pawn receipt or ticket.

§ 141.43 Outstanding obligations owed to pledgee.

If the pledgor tenders payment to be applied toward redemption of a pawned item, it shall be so applied by the pledgee, irrespective of other outstanding obligations owed by the pledgor to the pledgee. The pledgee may not deny the pledgor the right to redeem the pawn.

§ 141.44 Insurance on pawn.

(a) Any licensee under this part who lends money or extends credit with personal property as security and holds such property as a pledge shall maintain invault all risk insurance coverage running in favor of the pledgor for such property in amounts based upon a report issued monthly to the insurer. Such monthly report shall be an amount not less than the total agreed replacement value of all pawned items then held by the licensee.

(b) A copy of the insurance policy shall be available for inspection at the licensee's place of business and a copy shall be filed with the Commissioner.

Subpart E—Consumer Credit Transactions Other Than Pawn

§141.45 Consumer credit applications.

Any reservation business offering credit which is not secured by pawn shall provide an application for credit to any customer requesting credit. Within thirty (30) days of the date of application, the lender shall act upon the application and notify the customer in writing of the decision with the reason therefor. A business owner who reduces the amount of credit available to a customer or terminates a credit account shall provide written notice to the customer stating the reason for the reduction or termination of such credit.

§141.46 Credit disclosure statements.

Upon approval of a credit application the lender shall give the applicant the following information where applicable in a written disclosure statement:

(a) The maximum credit limit of the account.

(b) The conditions under which a finance charge may be imposed.

(c) The period in which payment may be made without incurring a finance charge.

(d) The method used in determining the balance on which the finance charge is calculated.

(e) The method used to calculate the finance charge.

(f) The periodic rates used and the range of balances to which each rate applies.

(g) The conditions under which additional charges may be made and the method for calculating those charges.

(h) A description of any lien that may be acquired on a customer's property.

(i) The minimum payment that must be made on each billing.

§141.47 Monthly billing statement.

On all credit accounts on which a finance charge may be imposed and for all other credit accounts when requested by the customer, a licensee shall issue a monthly billing statement to the customer stating the following information where applicable:

(a) The unpaid balance at the start of the billing period.

(b) The amount and date of each extension of credit and identification of each item costing more than ten dollars ($10).

(c) Payments made by a customer and other credits, including returns, rebates, and adjustments.

(d) The finance charge shown in dollars and cents.

(e) The rates used in calculating the finance charge plus the range of balances to which the finance charge was calculated.

(f) The closing date of the billing cycle.

(g) The unpaid balance at that time.

§141.48 Translation of disclosure statements.

Disclosure required by §§141.46 and 141.47 shall be made in writing regardless of the customer's ability to speak, read, or write the English language. Disclosure to non-English speaking persons shall be translated orally into the appropriate language.

§141.49 Usury prohibited.

No reservation business may take or receive money, goods, or other things of value for a loan or forbearance on a debt that exceeds in value the principal plus twenty-four percent (24 percent) per annum finance charge. Any reservation business contracting for, reserving, or receiving directly or indirectly, any greater amount shall forfeit the finance charge.

Subpart F—Enforcement Powers, Procedures and Remedies

§141.50 Penalty and forfeiture of merchandise.

Any person other than an enrolled member of the tribe who either resides as a reservation business owner within the exterior boundaries of the Navajo, Hopi, or Zuni Reservations or introduces or attempts to introduce goods or to trade therein without a license shall forfeit all merchandise offered for sale to the Indians or found in the person's possession and is liable to a penalty of five hundred dollars ($500). This section may be enforced by commencing an action in the appropriate United States District Court under the provisions of 28 U.S.C. 1345.

§ 141.51 Authority to close unlicensed reservation businesses.

The Commissioner shall close any reservation business subject to the provisions of this part that does not hold a valid license or temporary permit.

§ 141.52 Revocation of license and lease and recovery on bond.

The reservation business owner is subject to revocation of license and lease and recovery on the bond in whole or in part in the event of any violation of the regulations of this part after a show cause proceeding according to the provisions of § 141.56.

[41 FR 22937, June 8, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 141.53 Cease and desist orders.

(a) If the Commissioner believes that violation of the regulations in this part is occurring, the Commissioner may order the person believed to be in violation to show cause according to the provisions of § 141.56 why a cease and desist order should not be issued.

(b) If the person accused of the violations fails to show cause at the hearing why such an order should not issue, the Commissioner shall issue the order.

(c) A person subject to a cease and desist order issued under this section who violates the order is liable to revocation of license after a show cause proceeding according to the provisions of § 141.56 of this part.

§ 141.54 Periodic review of performance.

(a) The Commissioner shall review licenses at ten (10) year intervals to determine whether or not the business is operating in accordance with these regulations and all other applicable laws and regulations and whether the business is adequately serving the economic needs of the community.

(b) If, as a result of the review provided in paragraph (a) of this section, the Commissioner finds that the licensee has repeatedly violated these regulations, the Commissioner may order the licensee to show cause according to the provisions of § 141.56 why the licensee's license should not be revoked.

(c) If the licensee fails to show cause why the license should not be revoked, the Commissioner shall revoke the license.

§ 141.55 Price monitoring and control.

(a) A reservation business may not charge its customers unfair or unreasonable prices. To insure compliance with this section, the Commissioner shall perform audits as provided in § 141.58. In performing those audits the Commissioner may inspect all original books, records, and other evidences of the cost of doing business. In addition, at least once a year the Commissioner shall cause to be made a survey of the prices of flour, sugar, fresh eggs, lard, coffee, ground beef, bread, cheese, fresh milk, canned fruit, and such other goods as the Commissioner deems appropriate in all stores licensed under these regulations and in a representative number of similar stores located in communities immediately adjoining the reservations. The results of the survey shall be posted publicly, sent to each licensed business, and made available to the appropriate agency of the tribal government. Copies of the survey shall be available at the office of the Area Director.

(b) If the Commissioner finds that a reservation business is charging higher prices, especially for basic consumer commodities, than those charged on the average based on the studies conducted under the provisions of paragraph (a) of this section, the Commissioner may order the business owner to show cause under the provisions of § 141.56 why an order should not be issued to reduce prices. If the Commissioner determines that the prices charged by the business are not economically justified, based on all of the information, then the Commissioner may order the business to reduce its price on all items determined to be priced too high to a reasonable price as determined by the Commissioner, but in no event to a lower price than the cost of the item increased by a reasonable mark-up.

§ 141.56 Show cause procedures.

(a) When the Commissioner believes there has been a violation of this part

the Commissioner shall serve the licensee with written notice setting forth in detail the nature of the alleged violation and stating what remedial action the Commissioner proposes to take.

(b) The licensee shall have ten (10) days from the date of receipt of notice in which to show cause why the contemplated remedial action should not be ordered.

(c) If within the ten (10) day period the Commissioner determines that the violation may be corrected and the licensee agrees to take the necessary corrective measure, the licensee shall be given the opportunity to take the necessary corrective measures.

(d) If the licensee fails within a reasonable time to correct the violation or to show cause why the contemplated remedial action should not be ordered, the Commissioner shall order the appropriate remedial action.

(e) If the Commissioner orders remedial action the licensee may appeal under the provisions of part 2 of this title not later than thirty (30) days after the date on which the remedial action is ordered.

§ 141.57 Procedures to cancel liability on bond.

(a) Any surety who wishes to be relieved from liability arising on a bond issued under this part shall file with the Commissioner a statement in writing setting forth the desire of the surety to be relieved of liability and the reasons therefor.

(b) The surety shall mail a copy of the statement by certified mail, return receipt requested, to the last known address of the licensee named in the bond.

(c) Twenty (20) days after the statement required in paragraph (b) of this section is mailed to the licensee and the statement required in paragraph (a) of this section is filed with the Commissioner, the surety from all liability thereafter arising on the bond.

(d) If the licensee does not have other bond sufficient to meet the requirements of this part or has not executed and filed a new or substitute bond within twenty (20) days after the service of the statement, the Commissioner shall declare the license and lease void.

(e) No surety is released from liability under the bond for claims which arose prior to the issuance of the Commissioner's order releasing the surety.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976; 41 FR 22937, June 8, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 141.58 Records, reports, and obligations of reservation business owners.

(a) The Commissioner may, in consultation with interested persons and agencies, promulgate a model bookkeeping system for use in reservation businesses. Until such model bookkeeping system is promulgated, each business owner shall keep records in accordance with generally accepted accounting principles.

(b) Each reservation business owner shall file with the Area Director an annual report on or before April 15 in a form approved by the Commissioner. Reports shall be subject to a yearly audit. The reports shall contain the names and respective interests of all persons participating in the business.

(c) The business owner or an employee shall record all sales and purchases whether for cash or credit. If the business is on the Navajo Reservation the owner or an employee shall supply the customer with a copy of the sale transaction containing a description of the article purchased or sold, the date of the transaction, and the price. A cash register receipt complies with this paragraph for grocery or dry goods purchases for cash.

(d) The licensee shall keep a duplicate copy of any writing required by paragraph (c) of this section for a period of not less than three (3) years and shall provide the customer or the customer's representative one copy of those writings upon request.

[40 FR 39837, Aug. 29, 1975, as amended at 41 FR 3288, Jan. 22, 1976; 41 FR 13937, Apr. 1, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 141.59 Customer complaint procedures.

(a) Any customer of a licensee may file a complaint with the Commissioner alleging that the licensee has committed a violation of this part.

(b) Upon receipt of a customer complaint the Commissioner shall initiate show cause proceedings under the provisions of § 141.56 of this part.

(c) If the Commissioner fails to order remedial action within forty (40) days from the date the complaint is filed, the complainant may appeal under the provisions of part 2 of this title not later than seventy (70) days after the date the complaint is filed.

(d) If the Commissioner orders remedial action, the complainant may appeal under the provisions of part 2 of this title not later than thirty (30) days after the date on which the remedial action is ordered.

PART 142—OPERATION OF U.S.M.S. ''NORTH STAR'' BETWEEN SEATTLE, WASH., AND STATIONS OF THE BUREAU OF INDIAN AFFAIRS AND OTHER GOVERNMENT AGENCIES, ALASKA

Sec.

142.1 Responsibility for operation.
142.2 Transportation of freight for Federal agencies and others.
142.3 Employment of Natives.
142.4 Prohibition of trade with Natives.
142.5 Passenger rates.
142.6 Private passengers.
142.7 Transportation of children.
142.8 Transportation of Federal employees and their families and Natives.
142.9 Preferential passengers.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10674, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 142.1 Responsibility for operation.

(a) The director of the Seattle Liaison Office, Bureau of Indian Affairs, Seattle, Washington, under the jurisdiction of the Area Director, Juneau Area Office, Bureau of Indian Affairs, Juneau, Alaska, has responsibility for the operation of the ship for the Department of the Interior, Bureau of Indian Affairs, including repair, upkeep, payment of bills and employment of personnel.

(b) Itineraries for each voyage shall be made by the Director of the Seattle Liaison Office in consultation with the Area Director of the Juneau Area Office, Bureau of Indian Affairs, Juneau, Alaska. Preference is to be accorded to the work of the Bureau of Indian Affairs. The Area Director is vested with authority to direct the use of the ship to perform special services which may arise and to act in any emergency.

[39 FR 12246, Apr. 4, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 142.2 Transportation of freight for Federal agencies and others.

(a) All agencies of the Federal Government, including activities of the Bureau of Indian Affairs, Alaskan Natives, cooperatives of Alaskan Natives, business enterprises owned and operated by Alaskan Natives and Federal employees shall be charged for freight, lighterage and longshoring and other terminal charges in accordance with tariff rates and terminal charges established by the Commissioner of Indian Affairs.

(b) Baggage and other personal property of passengers that cannot be readily accommodated in the passengers' staterooms will be manifested as freight and charged for at the established rates.

(c) Commercial freight may be carried between points where adequate service is not provided by commercial vessels. Commercial freight, when carried, shall be prepaid at the same tariff rates established under paragraph (a) of this section.

(d) All freight accepted must be properly manifested, giving the name and address of the consignor and the consignee, and a description of the goods, including gross weight.

(e) The liability of the United States for any loss or damage to, or non-delivery of freight shall be limited as permitted in 46 U.S.C. 746 and the Carriage of Goods by Sea Act (46 U.S.C. 1300–1315), and the terms of such limitation of liability shall be contained in any document of title relating to the carriage of goods by sea.

[22 FR 10674, Dec. 24, 1957, as amended at 27 FR 12399, Dec. 14, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 142.3 Employment of Natives.

Natives shall be employed on the ''North Star'' to fill all positions for which they are qualified.

§142.4 Prohibition of trade with Natives.

Officers and members of the crew on the vessel are prohibited from engaging in trade with the Natives.

§142.5 Passenger rates.

Rates for transportation of passengers shall be established by the Commissioner and shall be the same for all passengers, except as provided in §142.7. Rates shall be on file for public inspection at the Bureau of Indian Affairs offices in Seattle, Washington and Juneau, Alaska.

§142.6 Private passengers.

No private passengers (except Federal employees and their families and Natives of Alaska) shall be transported on the ''North Star'' between points where adequate services are provided by commercial vessels. Where such commercial vessels are not available, and where accommodations can be furnished on the ''North Star'' without detriment to Government business, private travelers may be transported at the rates established pursuant to §142.5.

§142.7 Transportation of children.

The rates established for the transportation of children shall be subject to the following rules:

(a) No charge shall be made for transportation of children under two years of age.

(b) Children who have reached their second birthday, but not their twelfth birthday shall be transported at half the rate established pursuant to §142.5 for all other passengers.

§142.8 Transportation of Federal employees and their families and Natives.

(a) All agencies of the Federal Government will be billed at the rates established pursuant to §142.5 for each employee traveling on official business.

(b) When not in official travel status, Federal employees and families of Federal employees will be transported at the rates established pursuant to §142.5.

(c) Natives of Alaska, who are not indigent, will be charged the same rates as all other passengers.

§142.9 Preferential passengers.

In the booking of passage on the ship, preference shall be given to employees of the Bureau of Indian Affairs and their families, to Natives of Alaska, and to Public Health Service personnel traveling in behalf of the Indian health program, and their families.

PART 143—CHARGES FOR GOODS AND SERVICES PROVIDED TO NON-FEDERAL USERS

Sec.
143.1 Definitions.
143.2 Purpose.
143.3 Procedures.
143.4 Charges.
143.5 Payment.

AUTHORITY: 31 U.S.C. 9701; 25 U.S.C. 2, 13, 413.

SOURCE: 55 FR 19621, May 10, 1990, unless otherwise noted.

§143.1 Definitions.

As used in this part:

(a) *Assistant Secretary* means the Assistant Secretary—Indian Affairs, Department of the Interior, or other employee to whom authority has been delegated.

(b) *Reservation* means any bounded geographical area established or created by treaty, statute, executive order, or interpreted by court decision and over which a federally recognized Indian Tribal entity may exercise certain jurisdiction.

(c) *Flat fee* is the amount prorated to each user based on the total costs incurred by the Government for the goods/services being provided.

(d) *Non-Federal users* are persons not employed by the Federal Government who receive goods/services provided by the BIA.

(e) *Goods/Services* for the purpose of these regulations are those provided or performed at the request of an indentifiable recipient and are above and beyond those which accrue to the public at large.

§143.2 Purpose.

(a) The purpose of the regulations in this part is to establish procedures for the assessment, billing, and collection of charges for goods/services provided to non-Federal users.

(b) The Assistant Secretary may sell or contract to sell to non-Federal users within, or in the immediate vicinity of an Indian Reservation (or former Reservation), any of the following goods/services if it is determined that the goods/services are not available from another local source or providing that goods/services is in the best interest of the Indian tribes or individual Indians. The goods/services include, but are not limited to:

(1) Electric power;
(2) Water;
(3) Sewage operations;
(4) Landfill operations;
(5) Steam;
(6) Compressed air;
(7) Telecommunications;
(8) Natural, manufactured, or mixed gas;
(9) Fuel oil;
(10) Landscaping; and
(11) Garbage collections.

§ 143.3 Procedures.

(a) All non-Federal users who receive the above listed goods/services must sign a standard agreement adopted by the Assistant Secretary for the goods/services. This agreement shall contain the following statement:

''Application for _____ (specify good(s)/service(s)) is hereby requested at the noted address. In exchange for receiving the requested good(s)/service(s), the applicant agrees to accept and abide by all applicable rules, regulations, and rate schedules, including any future amendments, additions, or changes thereto. If the applicant should fail to comply with any of the rules, regulations, or rate schedules, the cost incurred by the United States Government for enforcement of same shall be charged to the applicant.

(b) Lack of a signed agreement does not invalidate payment requirements. Any user will be responsible for payment of actual goods/services received or delivered.

§ 143.4 Charges.

(a) Charges shall be established by the Assistant Secretary and shall be based upon the total costs (including both direct and indirect) of goods/services to the Government at that locale. A schedule of charges will be made available to the public upon request.

(b) All documentation used in establishing charges must be maintained at the appropriate Bureau of Indian Affairs agency or Area Office and shall be made available for review by the public upon request.

(c) Established charges may be reviewed, amended, and adjusted monthly, but not less than annually.

(d) A flat fee may be charged where it is impractical to measure actual usage by recipients.

(e) Security deposits are authorized under this regulation at the discretion of the Assistant Secretary. The deposit may not exceed the amount of one billing cycle. All deposits will be applied to the final bill.

§ 143.5 Payment.

(a) The Assistant Secretary—Indian Affairs will establish a billing cycle that is appropriate to the goods/services being provided.

(b) Payment is due within 30 days after the billing date.

(c) Upon non-payment by the non-Federal user, the Assistant Secretary may discontinue service. Service may be discontinued after proper notification by letter. Proper notification shall include:

(1) Written notice to user that payment is due. Such notice shall afford the user the opportunity to challenge payment or excuse non-payment within 14 days of the date on the notification letter.

(2) Following the expiration of the 14 day deadline for response, and after consideration of any such response, the Assistant Secretary—Indian Affairs may notify the user by letter that if payment is not received within 10 days of the date on the letter, the service will be discontinued.

(d) The Assistant Secretary has the discretion to continue services for health and safety reasons. However, the non-Federal user is still responsible for payment for goods/services provided.

(e) Once service has been discontinued based on deliquency of payment, the discontinuance may be appealed under part 2 of this title.

SUBCHAPTER H—LAND AND WATER

PART 150—LAND RECORDS AND TITLE DOCUMENTS

Sec.
150.1 Purpose and scope.
150.2 Definitions.
150.3 Maintenance of land records and title documents.
150.4 Location and service areas for land titles and records offices.
150.5 Other Bureau offices with title service responsibility.
150.6 Recordation of title documents.
150.7 Curative action to correct title defects.
150.8 Title status reports.
150.9 Land status maps.
150.10 Certification of land records and title documents.
150.11 Disclosure of land records, title documents, and title reports.

AUTHORITY: Act of June 30, 1834 (4 Stat. 738; 25 U.S.C. 9). Act of July 26, 1892 (27 Stat. 272; 25 U.S.C. 5). Reorganization Plan No. 3 of 1950 approved June 20, 1949 (64 Stat. 1262). (Act of April 26, 1906 (34 Stat. 137); Act of May 27, 1908 (35 Stat. 312); Act of August 1, 1914 (38 Stat. 582, 598) deal specifically with land records of the Five Civilized Tribes.)

SOURCE: 46 FR 47537, Sept. 29, 1981, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

CROSS-REFERENCE: For further regulations pertaining to proceedings in Indian probate, see 43 CFR part 4, subpart D.

§150.1 Purpose and scope.

These regulations set forth authorities, policy and procedures governing the recording, custody, maintenance, use and certification of title documents, and the issuance of title status reports for Indian land.

§150.2 Definitions.

As used in this part.

(a) ''Secretary'' is the Secretary of the Interior or his authorized representative.

(b) ''Commissioner'' is the Commissioner of Indian Affairs or his authorized representative.

(c) ''Agency'' is an Indian Agency or other field unit of the Bureau of Indian Affairs having Indian land under its immediate jurisdiction.

(d) ''Superintendent'' is the designated officer in charge of an Agency.

(e) ''Tribe'' is a tribe, band, nation, community, rancheria, colony, pueblo, or other Federally-acknowledged group of Indians.

(f) ''Bureau'' is the Bureau of Indian Affairs.

(g) ''Land'' is real property, including any interests, benefits, and rights inherent in the ownership of the real property.

(h) ''Indian land'' is an inclusive term describing all lands held in trust by the United States for individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance, or all lands which are subject to the rights of use, occupancy and/or benefit of certain tribes. For purposes of this part, the term Indian land also includes land for which the title is held in fee status by Indian tribes, and U.S. Government-owned land under Bureau jurisdiction.

(i) ''Administrative Law Judge'' is an employee of the Office of Hearing and Appeals, Department of the Interior, upon whom authority has been conferred by the Secretary to probate the trust or restricted estates of deceased Indians in accordance with 43 CFR part 4, subpart D.

(j) ''Land Titles and Records Offices'' are those offices within the Bureau of Indian Affairs charged with the Federal responsibility to record, provide custody, and maintain records that affect titles to Indian lands, to examine titles, and to provide title status reports for such land.

(k) ''Manager'' is the designated officer in charge of a Land Titles and Records Office.

(l) ''Title document'' is any document that affects the title to or encumbers Indian land and is required to be recorded by regulation or Bureau policy.

(m) ''Recordation'' or ''recording'' is the acceptance of a title document by the appropriate Land Titles and Records Office. The purpose of recording is to provide evidence of a transaction, event, or happening that affects land titles; to preserve a record of the title

document; and to give constructive notice of the ownership and change of ownership and the existence of encumbrances to the land.

(n) ''Title examination'' means an examination and evaluation by a qualified title examiner of the completeness and accuracy of title documents affecting a particular tract of Indian land with certification of the findings by the Manager of the Land Titles and Records Office.

(o) ''Title status report'' means a report issued after a title examination which shows the proper legal description of a tract of Indian land; current ownership, including any applicable conditions, exceptions, restrictions or encumbrances on record; and whether the land is in unrestricted, restricted, trust, or other status as indicated by the records in a Land Titles and Records Office.

§ 150.3 Maintenance of land records and title documents.

The Land Titles and Records Offices within the Bureau are hereby designated as the offices of record for land records and title documents and are hereby charged with the Federal responsibility to record, provide custody, and maintain records that affect titles to Indian land, to examine titles, and to provide title status reports.

§ 150.4 Locations and service areas for land titles and records offices.

Shown below are present Land Titles and Records Offices and the jurisdictional area served by each office.

(a) Aberdeen, S. Dakota Office provides title service for Indian land located under the jurisdiction of the Aberdeen and Minneapolis Area Offices, except for Indian land on the White Earth, Isabella, and Oneida Indian Reservations.

(b) Albuquerque, New Mexico Office provides title services for Indian land located under the jurisdiction of the Albuquerque, Navajo, and Phoenix Area Offices.

(c) Anadarko, Oklahoma Office provides title services for Indian land located under the jurisdiction of the Anadarko Area Office and under the Miami Agency of the Muskogee Area Office.

(d) Billings, Montana Office provides title services for Indian land located under the jurisdiction of the Billings Area Office.

(e) Portland, Oregon Office provides title services for Indian land located under the jurisdiction of the Portland and Sacramento Area Offices.

§ 150.5 Other Bureau offices with title service responsibility.

(a) Muskogee Area Office is the office of record and performs limited title functions for all Indian land of the Five Civilized Tribes. The regulations in this part apply to the Muskogee Area Office to the extent that they relate to the title services performed by that office.

(b) The Juneau Area Office has title service responsibility for the Juneau Area. This authority has been largely delegated to the agencies. The regulations in this part apply to the Juneau Area Office to the extent practicable.

(c) The Cherokee Agency has title service responsibility for the Eastern Cherokee Reservation. The regulations in this part apply to the Cherokee Agency to the extent practicable.

(d) The Bureau Central Office, Washington, DC, provides title services for all other Indian land not shown above in § 150.4 or in this section, including the land of the Absentee Wyandottes. The regulations in this part apply to the Central Office.

§ 150.6 Recordation of title documents.

All title documents shall be submitted to the appropriate Land Titles and Records Office for recording immediately after final approval, issuance, or acceptance. Bureau officials delegated authority by the Secretary to approve title documents or accept title are responsible for prompt compliance with the recording requirement. Documents submitted for recording shall be completed in accordance with prescribed Bureau regulations or instructions.

(a) *Title documents other than probate records.* The original, a signed duplicate, or a certified copy of such documents shall be submitted for recording. Following the recording process, the

Land Titles and Records Office will return those title documents that are required to be returned to the originating office with appropriate recording information.

(b) *Probate records.* In accordance with 43 CFR part 4, subpart D, Administrative Law Judges shall forward the original record of Indian probate decisions and copies of petitions for rehearing, reopening, and other appeals to the Land Titles and Records Office which provides service to the originating Agency. If trust land or Indian heirs involved in the probate are located within the jurisdictional area of another Land Titles and Records Office, the Administrative Law Judge shall also send a duplicate copy to that office. Probate records submitted by an Administrative Law Judge for recording will be retained by the Land Titles and Records Office.

§150.7 Curative action to correct title defects.

Land Titles and Records Office shall initiate such action as described below to cure defects in the record discovered during the recording of title documents or examination of titles.

(a) If an error is traced to a defective title document other than probate records, the Land Titles and Records Office shall notify the originating office of the defect.

(b) If errors are discovered in probate records, the Land Titles and Records Office may initiate corrective action as follows:

(1) An administrative modification shall be issued to modify probate records to include any Indian land omitted from the inventory if such property is located in the same state and takes the same line of descent as that shown in the original probate decision. Authority is delegated to the Commissioner by 43 CFR 4.272 to make such modifications except on those Indian reservations covered by special Inheritance Acts (43 CFR 4.300). Copies of administrative modifications shall be distributed to the appropriate Administrative Law Judge, Agencies with jurisdiction over the Indian land, and to all persons who share in the estate.

(2) Land Titles and Records Offices shall notify the Superintendent when modifications are required by Administrative Law Judges for other types of probate errors. Corrective action is then initiated in accordance with 43 CFR part 4, subpart D.

(3) Land Titles and Records Offices shall issue administrative corrections to correct probate errors which are clerical in nature and which do not affect vested property rights or involve questions of due process. Copies of administrative corrections are distributed to the appropriate Administrative Law Judge and Agency.

§150.8 Title status reports.

Land Titles and Records Offices may conduct a title examination of a tract of Indian land provide a title status report upon request to those persons authorized by law to receive such information. Requests for title status reports shall be submitted by or through the Bureau office that has administrative jurisdiction over the Indian land. All requests must clearly identify the tract of Indian land.

§150.9 Land status maps.

The Land Titles and Records Offices shall prepare and maintain maps of all reservations and similar entities within their jurisdictions to assist Bureau personnel in the execution of their title service responsibilities. Base maps shall be prepared from plats of official survey made by the General Land Office and the Bureau of Land Management. These base maps, showing prominent physical features and section, township and range lines, shall be used to prepare land status maps. The land status maps shall reflect the individual tracts, tract numbers, and current status of the tract. Other special maps, such as plats and townsite maps, may also be prepared and maintained to meet the needs of individual Land Titles and Records Offices, Agencies, and Indian tribes.

§150.10 Certification of land records and title documents.

Under the provisions of the Act of July 26, 1892 (27 Stat. 273; 25 U.S.C. 6), an offical seal was created for the use of the Commissioner of Indian Affairs in authenticating and certifying copies of Bureau records. Managers of Land

Titles and Records Offices are designated as Certifying Officers for this purpose. When a copy or reproduction of a title document is authenticated by the official seal and certified by a Manager, Land Titles and Records Office, the copy or reproduction shall be admitted into evidence the same as the original from which it was made. The fees for furnishing such certified copies are established by a uniform fee schedule applicable to all constituent units of the Department of the Interior and published in 43 CFR part 2, appendix A.

§ 150.11 Disclosure of land records, title documents, and title reports.

(a) The usefulness of a Land Titles and Records Office depends in large measure on the ability of the public to consult the records contained therein. It is therefore, the policy of the Bureau of Indian Affairs to allow access to land records and title documents unless such access would violate the Privacy Act, 5 U.S.C. 552a or other law restricting access to such records, or there are strong policy grounds for denying access where such access is not required by the Freedom of Information Act, 5 U.S.C. 552. It shall be the policy of the Bureau of Indian Affairs that, unless specifically authorized, monetary considerations will not be disclosed insofar as leases of tribal land are concerned.

(b) Before disclosing information concerning any living individual, the Manager, Land Titles and Records Office, shall consult 5 U.S.C. 552a(b) and the notice of routine users then in effect to determine whether the information may be released without the written consent of the person to whom it pertains.

PART 151—LAND ACQUISITIONS

Sec.

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151.3 Land acquisition policy.
151.4 Acquisitions in trust of lands owned in fee by an Indian.
151.5 Trust acquisitions in Oklahoma under section 5 of the I.R.A.
151.6 Exchanges.
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151.10 On-reservation acquisitions.
151.11 Off-reservation acquisitions.
151.12 Action on requests.
151.13 Title examination.
151.14 Formalization of acceptance.
151.15 Information collection.

AUTHORITY: R.S. 161: 5 U.S.C. 301. Interpret or apply 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; 48 Stat. 985, as amended; 49 Stat. 1967, as amended, 53 Stat. 1129; 63 Stat. 605; 69 Stat. 392, as amended; 70 Stat. 290, as amended; 70 Stat. 626; 75 Stat. 505; 77 Stat. 349; 78 Stat. 389; 78 Stat. 747; 82 Stat. 174, as amended, 82 Stat. 884; 84 Stat. 120; 84 Stat. 1874; 86 Stat. 216; 86 Stat. 530; 86 Stat. 744; 88 Stat. 78; 88 Stat. 81; 88 Stat. 1716; 88 Stat. 2203; 88 Stat. 2207; 25 U.S.C. 2, 9, 409a, 450h, 451, 464, 465, 487, 488, 489, 501, 502, 573, 574, 576, 608, 608a, 610, 610a, 622, 624, 640d–10, 1466, 1495, and other authorizing acts.

SOURCE: 45 FR 62036, Sept. 18, 1980, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

CROSS-REFERENCE: For regulations pertaining to: The inheritance of interests in trust or restricted land, see parts 15, 16, and 17 of this title and 43 CFR part 4; the purchase of lands under the BIA Loan Guaranty, Insurance and Interest Subsidy program, see part 103 of this title; the exchange and partition of trust or restricted lands, see part 152 of this title; land acquisitions authorized by the Indian Self-Determination and Education Assistance Act, see parts 272 and 276 of this title; the acquisition of allotments on the public domain or in national forests, see 43 CFR part 2530; the acquisition of Native allotments and Native townsite lots in Alaska, see 43 CFR parts 2561 and 2564; the acquisition of lands by Indians with funds borrowed from the Farmers Home Administration, see 7 CFR part 1823, subpart N; the acquisition of land by purchase or exchange for members of the Osage Tribe not having certificates of competency, see §§ 117.8 and 158.54 of this title.

§ 151.1 Purpose and scope.

These regulations set forth the authorities, policy, and procedures governing the acquisition of land by the United States in trust status for individual Indians and tribes. Acquisition of land by individual Indians and tribes in fee simple status is not covered by these regulations even though such land may, by operation of law, be held in restricted status following acquisition. Acquisition of land in trust status by inheritance or escheat is not covered by these regulations. These regulations do not cover the acquisition of

land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or it members.

§ 151.2 Definitions.

(a) *Secretary* means the Secretary of the Interior or authorized representative.

(b) *Tribe* means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians, including the Metlakatla Indian Community of the Annette Island Reserve, which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs. For purposes of acquisitions made under the authority of 25 U.S.C. 488 and 489, or other statutory authority which specifically authorizes trust acquisitions for such corporations, ''Tribe'' also means a corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477) or section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 503).

(c) *Individual Indian* means:

(1) Any person who is an enrolled member of a tribe;

(2) Any person who is a descendent of such a member and said descendant was, on June 1, 1934, physically residing on a federally recognized Indian reservation;

(3) Any other person possessing a total of one-half or more degree Indian blood of a tribe;

(4) For purposes of acquisitions outside of the State of Alaska, *Individual Indian* also means a person who meets the qualifications of paragraph (c)(1), (2), or (3) of this section where ''Tribe'' includes any Alaska Native Village or Alaska Native Group which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs.

(d) *Trust land* or *land in trust status* means land the title to which is held in trust by the United States for an individual Indian or a tribe.

(e) *Restricted land* or *land in restricted status* means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law or because of a Federal law directly imposing such limitations.

(f) Unless another definition is required by the act of Congress authorizing a particular trust acquisition, *Indian reservation* means that area of land over which the tribe is recognized by the United States as having governmental jurisdiction, except that, in the State of Oklahoma or where there has been a final judicial determination that a reservation has been disestablished or diminished, *Indian reservation* means that area of land constituting the former reservation of the tribe as defined by the Secretary.

(g) *Land* means real property or any interest therein.

(h) *Tribal consolidation area* means a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe.

[45 FR 62036, Sept. 18, 1980, as amended at 60 FR 32879, June 23, 1995]

§ 151.3 Land acquisition policy.

Land not held in trust or restricted status may only be acquired for an individual Indian or a tribe in trust status when such acquisition is authorized by an act of Congress. No acquisition of land in trust status, including a transfer of land already held in trust or restricted status, shall be valid unless the acquisition is approved by the Secretary.

(a) Subject to the provisions contained in the acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status:

(1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or

(2) When the tribe already owns an interest in the land; or

(3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

(b) Subject to the provisions contained in the acts of Congress which authorize land acquisitions or holding

land in trust or restricted status, land may be acquired for an individual Indian in trust status:

(1) When the land is located within the exterior boundaries of an Indian reservation, or adjacent thereto; or

(2) When the land is already in trust or restricted status.

§ 151.4 Acquisitions in trust of lands owned in fee by an Indian.

Unrestricted land owned by an individual Indian or a tribe may be conveyed into trust status, including a conveyance to trust for the owner, subject to the provisions of this part.

§ 151.5 Trust acquisitions in Oklahoma under section 5 of the I.R.A.

In addition to acquisitions for tribes which did not reject the provisions of the Indian Reorganization Act and their members, land may be acquired in trust status for an individual Indian or a tribe in the State of Oklahoma under section 5 of the Act of June 18, 1934 (48 Stat. 985; 25 U.S.C. 465), if such acquisition comes within the terms of this part. This authority is in addition to all other statutory authority for such an acquisition.

§ 151.6 Exchanges.

An individual Indian or tribe may acquire land in trust status by exchange if the acquisition comes within the terms of this part. The disposal aspects of an exchange are governed by part 152 of this title.

§ 151.7 Acquisition of fractional interests.

Acquisition of a fractional land interest by an individual Indian or a tribe in trust status can be approved by the Secretary only if:

(a) The buyer already owns a fractional interest in the same parcel of land; or

(b) The interest being acquired by the buyer is in fee status; or

(c) The buyer offers to purchase the remaining undivided trust or restricted interests in the parcel at not less than their fair market value; or

(d) There is a specific law which grants to the particular buyer the right to purchase an undivided interest or interests in trust or restricted land without offering to purchase all of such interests; or

(e) The owner of a majority of the remaining trust or restricted interests in the parcel consent in writing to the acquisition by the buyer.

§ 151.8 Tribal consent for nonmember acquisitions.

An individual Indian or tribe may acquire land in trust status on a reservation other than its own only when the governing body of the tribe having jurisdiction over such reservation consents in writing to the acquisition; provided, that such consent shall not be required if the individual Indian or the tribe already owns an undivided trust or restricted interest in the parcel of land to be acquired.

§ 151.9 Requests for approval of acquisitions.

An individual Indian or tribe desiring to acquire land in trust status shall file a written request for approval of such acquisition with the Secretary. The request need not be in any special form but shall set out the identity of the parties, a description of the land to be acquired, and other information which would show that the acquisition comes within the terms of this part.

§ 151.10 On-reservation acquisitions.

Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision. The Secretary will consider the following criteria in evaluating requests for the acquisition of land in trust status when

the land is located within or contiguous to an Indian reservation, and the acquisition is not mandated:

(a) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(b) The need of the individual Indian or the tribe for additional land;

(c) The purposes for which the land will be used;

(d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;

(e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;

(f) Jurisdictional problems and potential conflicts of land use which may arise; and

(g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

(h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW., Room 4525 MIB, Washington, DC 20240.)

[45 FR 62036, Sept. 18, 1980, as amended at 60 FR 32879, June 23, 1995]

§ 151.11 Off-reservation acquisitions.

The Secretary shall consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the tribe's reservation, and the acquisition is not mandated:

(a) The criteria listed in § 151.10 (a) through (c) and (e) through (h);

(b) The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section.

(c) Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

(d) Contact with state and local governments pursuant to § 151.10 (e) and (f) shall be completed as follows: Upon receipt of a tribe's written request to have lands taken in trust, the Secretary shall notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice shall inform the state and local government that each will be given 30 days in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

[60 FR 32879, June 23, 1995, as amended at 60 FR 48894, Sept. 21, 1995;

§ 151.12 Action on requests.

(a) The Secretary shall review all requests and shall promptly notify the applicant in writing of his decision. The Secretary may request any additional information or justification he considers necessary to enable him to reach a decision. If the Secretary determines that the request should be denied, he shall advise the applicant of that fact and the reasons therefor in writing and notify him of the right to appeal pursuant to part 2 of this title.

(b) Following completion of the Title Examination provided in § 151.13 of this part and the exhaustion of any administrative remedies, the Secretary shall publish in the FEDERAL REGISTER, or in a newspaper of general circulation serving the affected area a notice of his/her decision to take land into trust under this part. The notice will state that a final agency determination to take land in trust has been made and that the Secretary shall acquire title in the name of the United States no

sooner than 30 days after the notice is published.

[45 FR 62036, Sept. 18, 1980. Redesignated at 60 FR 32879, June 23, 1995, as amended at 61 FR 18083, Apr. 24, 1996]

§ 151.13 Title examination.

If the Secretary determines that he will approve a request for the acquisition of land from unrestricted fee status to trust status, he shall acquire, or require the applicant to furnish, title evidence meeting the *Standards For The Preparation of Title Evidence In Land Acquisitions by the United States,* issued by the U.S. Department of Justice. After having the title evidence examined, the Secretary shall notify the applicant of any liens, encumbrances, or infirmities which may exist. The Secretary may require the elimination of any such liens, encumbrances, or infirmities prior to taking final approval action on the acquisition and he shall require elimination prior to such approval if the liens, encumbrances, or infirmities make title to the land unmarketable.

[45 FR 62036, Sept. 18, 1980. Redesignated at 60 FR 32879, June 23, 1995]

§ 151.14 Formalization of acceptance.

Formal acceptance of land in trust status shall be accomplished by the issuance or approval of an instrument of conveyance by the Secretary as is appropriate in the circumstances.

[45 FR 62036, Sept. 18, 1980. Redesignated at 60 FR 32879, June 23, 1995]

§ 151.15 Information collection.

(a) The information collection requirements contained in §§ 151.9; 151.10; 151.11(2)(c), and 151.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0100. This information is being collected to acquire land into trust on behalf of the Indian tribes and individuals, and will be used to assist the Secretary in making a determination. Response to this request is required to obtain a benefit.

(b) Public reporting for this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 337–SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Project 1076–0100], Office of Management and Budget, Washington, DC 20502.

[60 FR 32879, June 23, 1995]

PART 152—ISSUANCE OF PATENTS IN FEE, CERTIFICATES OF COMPETENCY, REMOVAL OF RESTRICTIONS, AND SALE OF CERTAIN INDIAN LANDS

Sec.
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ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS

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152.13 Removal of restrictions, Five Civilized Tribes, after application under section 2(a) of the Act of August 11, 1955.
152.14 Removal of restrictions, Five Civilized Tribes, without application.
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SALES, EXCHANGES AND CONVEYANCES OF TRUST OR RESTRICTED LANDS

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152.18 Sale with the consent of natural guardian or person designated by the Secretary.
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PARTITIONS IN KIND OF INHERITED ALLOTMENTS

152.33 Partition.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

152.34 Approval of mortgage and deeds of trust.
152.35 Deferred payment sales.

AUTHORITY: R.S. 161; 5 U.S.C. 301. Interpret or apply sec. 7, 32 Stat. 275, 34 Stat. 1018, sec. 1, 35 Stat. 444, sec. 1 and 2, 36 Stat. 855, as amended, 856, as amended, sec. 17, 39 Stat. 127, 40 Stat. 579, 62 Stat. 236, sec. 2, 40 Stat. 606, 68 Stat. 358, 69 Stat. 666: 25 U.S.C. 378, 379, 405, 404, 372, 373, 483, 355, unless otherwise noted.

SOURCE: 38 FR 10080, Apr. 24, 1973, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

CROSS REFERENCES: For further regulations pertaining to the sale of irrigable lands, see parts 160, 159 and § 134.4 of this chapter. For Indian money regulations, see parts 115, 111, 116, and 112 of this chapter. For regulations pertaining to the determination of heirs and approval of wills, see part 15 and §§ 11.30 through 11.32C of this chapter.

§ 152.1 Definitions.

As used in this part:

(a) ''Secretary'' means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) ''Agency'' means an Indian agency or other field unit of the Bureau of Indian Affairs having trust or restricted Indian land under its immediate jurisdiction.

(c) ''Restricted land'' means land or any interest therein, the title to which is held by an individual Indian, subject to Federal restrictions against alienation or encumbrance.

(d) ''Trust land'' means land or any interest therein held in trust by the United States for an individual Indian.

(e) ''Competent'' means the possession of sufficient ability, knowledge, experience, and judgment to enable an individual to manage his business affairs, including the administration, use, investment, and disposition of any property turned over to him and the income or proceeds therefrom, with such reasonable degree of prudence and wisdom as will be apt to prevent him from losing such property or the benefits thereof. (Act of August 11, 1955 (69 Stat. 666)).

(f) ''Tribe'' means a tribe, band, nation, community, group, or pueblo of Indians.

§ 152.2 Withholding action on application.

Action on any application, which if approved would remove Indian land from restricted or trust status, may be withheld, if the Secretary determines that such removal would adversely affect the best interest of other Indians, or the tribes, until the other Indians or the tribes so affected have had a reasonable opportunity to acquire the land from the applicant. If action on the application is to be withheld, the applicant shall be advised that he has the right to appeal the withholding action pursuant to the provisions of part 2 of this chapter.

ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS

§ 152.3 Information regarding status of applications for removal of Federal supervision over Indian lands.

The status of applications by Indians for patents in fee, certificates of competency, or orders removing restrictions shall be disclosed to employees of the Department of the Interior whose

duties require that such information be disclosed to them; to the applicant or his attorney, upon request; and to Members of Congress who inquire on behalf of the applicant. Such information will be available to all other persons, upon request, 15 days after the fee patent has been issued by the Bureau of Land Management, or 15 days after issuance of certificate of competency or order removing restrictions, or after the application has been rejected and the applicant notified. Where the termination of the trust or restricted status of the land covered by the application would adversely affect the protection and use of Indian land remaining in trust or restricted status, the owners of the land that would be so affected may be informed that the application has been filed.

§ 152.4 Application for patent in fee.

Any Indian 21 years of age or over may apply for a patent in fee for his trust land. A written application shall be made in the form approved by the Secretary and shall be completed and filed with the agency having immediate jurisdiction over the land.

§ 152.5 Issuance of patent in fee.

(a) An application may be approved and fee patent issued if the Secretary, in his discretion, determines that the applicant is competent. When the patent in fee is delivered, an inventory of the estate covered thereby shall be given to the patentee. (Acts of Feb. 8, 1887 (24 Stat. 388), as amended (25 U.S.C. 349); June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483), and other authorizing acts.)

(b) If an application is denied, the applicant shall be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of part 2 of this chapter.

(c) White Earth Reservation: The Secretary will, pursuant to the Act of March 1, 1907 (34 Stat. 1015), issue a patent in fee to any adult mixed-blood Indian owning land within the White Earth Reservation in the State of Minnesota upon application from such Indian, and without consideration as to whether the applicant is competent.

(d) Fort Peck Reservation: Pursuant to the Act of June 30, 1954 (68 Stat. 358), oil and gas underlying certain allotments in the Fort Peck Reservation were granted to certain Indians to be held in trust for such Indians and provisions was made for issuance of patents in fee for such oil and gas or patents in fee for land in certain circumstances.

(1) Where an Indian or Indians were the grantees of the entire interest in the oil and gas underlying a parcel of land, and such Indian or Indians had before June 30, 1954, been issued a patent or patents in fee for any land within the Fort Peck Reservation, the title to the oil and gas was conveyed by the act in fee simple status.

(2) Where the entire interest in the oil and gas granted by the act is after June 30, 1954, held in trust for Indians to whom a fee patent has been issued at any time, for any land within the Fort Peck Reservation, or who have been or are determined by the Secretary to be competent, the Secretary will convey, by patent, without application, therefor, unrestricted fee simple title to the oil and gas.

(3) Where the Secretary determines that the entire interest in a tract of land on the Fort Peck Reservation is owned by Indians who were grantees of oil and gas under the act and he determines that such Indians are competent, he will issue fee patents to them covering all interests in the land without application.

§ 152.6 Issuance of patents in fee to non-Indians and Indians with whom a special relationship does not exist.

Whenever the Secretary determines that trust land, or any interest therein, has been acquired through inheritance or devise by a non-Indian, or by a person of Indian descent to whom the United States owes no trust responsibility, the Secretary may issue a patent in fee for the land or interest therein to such person without application.

§ 152.7 Application for certificate of competency.

Any Indian 21 years old or over, except certain adult members of the Osage Tribe as provided in § 152.9, who

holds land or an interest therein under a restricted fee patent may apply for a certificate of competency. The written application shall be made in the form approved by the Secretary and filed with the agency having immediate jurisdiction over the land.

§ 152.8 Issuance of certificate of competency.

(a) An application may be approved and a certificate of competency issued if the Secretary, in his discretion, determines that the applicant is competent. The delivery of the certificate shall have the effect of removing the restrictions from the land described therein. (Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372).)

(b) If the application is denied, the applicant shall be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of part 2 of this chapter.

§ 152.9 Certificates of competency to certain Osage adults.

Applications for certificates of competency by adult members of the Osage Tribe of one-half or more Indian blood shall be in the form approved by the Secretary. Upon the finding by the Secretary that an applicant is competent, a certificate of competency may be issued removing restrictions against alienation of all restricted property and terminating the trust on all restricted property, except Osage headright interests, of the applicant.

CROSS-REFERENCES: For regulations pertaining to the issuance of certificates of competency to adult Osage Indians of less than one-half Indian blood, see part 154 of this chapter.

§ 152.10 Application for orders removing restrictions, except Five Civilized Tribes.

Any Indian not under legal disability under the laws of the State where he resides or where the land is located, or the court-appointed guardian or conservator of any Indian, may apply for an order removing restrictions from his restricted land or the restricted land of his ward. The application shall be in writing setting forth reasons for removal of restrictions and filed with the agency having immediate jurisdiction over the lands.

§ 152.11 Issuance of orders removing restrictions, except Five Civilized Tribes.

(a) An application for an order removing restrictions may be approved and such order issued by the Secretary, in his discretion, if he determines that the applicant is competent or that removal of restrictions is in the best interests of the Indian owner. The effect of the order will be to remove the restrictions from the land described therein.

(b) If the application is denied, the applicant will be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of part 2 of this chapter.

§ 152.12 Removal of restrictions, Five Civilized Tribes, after application under authority other than section 2(a) of the Act of August 11, 1955.

When an Indian of the Five Civilized Tribes makes application for removal of restrictions from his restricted lands under authority other than section 2(a) of the Act of August 11, 1955 (69 Stat. 666), such application may be for either unconditional removal of restrictions or conditional removal of restrictions, but shall not include lands or interest in lands acquired by inheritance or devise.

(a) If the application is for unconditional removal of restrictions and the Secretary, in his discretion, determines the applicant should have the unrestricted control of that land described in his application, the Secretary may issue an order removing restrictions therefrom.

(b) When the Secretary, in his discretion, finds that in the best interest of the applicant all or part of the land described in the application should be sold with conditions concerning terms of sale and disposal of the proceeds, the Secretary may issue a conditional order removing restrictions which shall be effective only and simultaneously with the execution of a deed by said applicant upon completion of an advertised sale or negotiated sale acceptable to the Secretary.

§ 152.13 Removal of restrictions, Five Civilized Tribes, after application under section 2(a) of the Act of August 11, 1955.

When an Indian of the Five Civilized Tribes makes application for removal of restrictions under authority of section 2(a) of the Act of August 11, 1955 (69 Stat. 666), the Secretary will determine the competency of the applicant.

(a) If the Secretary determines the applicant to be competent, he shall issue an order removing restrictions having the effect stated in § 152.16.

(b) If the Secretary rejects the application, his action is not subject to administrative appeal, notwithstanding the provisions concerning appeals in part 2 of this chapter.

(c) If the Secretary rejects the application, or neither rejects nor approves the application within 90 days of the application date, the applicant may apply to the State district court in the county in which he resides for an order removing restrictions. If that State district court issues such order, it will have the effect stated in § 152.16.

§ 152.14 Removal of restrictions, Five Civilized Tribes, without application.

Section 2(b) of the Act of August 11, 1955 (69 Stat. 666), authorizes the Secretary to issue an order removing restrictions to an Indian of the Five Civilized Tribes without application therefor. When the Secretary determines an Indian to be competent, he shall notify the Indian in writing of his intent to issue an order removing restrictions 30 days after the date of the notice. This decision may be appealed under the provisions of part 2 of this chapter within such 30 days. All administrative appeals under that part will postpone the issuance of the order. When the decision is not appealed within 30 days after the date of notice, or when any dismissal of an appeal is not appealed within the prescribed time limit, or when the final appeal is dismissed, an order removing restrictions will be issued.

§ 152.15 Judicial review of removal of restrictions, Five Civilized Tribes, without application.

When an order removing restrictions is issued, pursuant to § 152.14, a copy of such order will be delivered to the Indian, to any person acting in his behalf, and to the Board of County Commissioners for the county in which the Indian resides. At the time the order is delivered written notice will be given the parties that under the terms of the Act of August 11, 1955 (69 Stat. 666), the Indian or the Board of County Commissioners has, within 6 months of the date of notification, the right to appeal to the State district court for the district in which the Indian resides for an order setting aside the order removing restrictions. The timely initiation of proceedings in the State district court will stay the effective date of the order removing restrictions until such proceedings are concluded. If the State district court dismisses the appeal, the order removing restrictions will become effective 6 months after notification to the parties of such dismissal. The effect of the issuance of such order will be as prescribed in § 152.16.

§ 152.16 Effect of order removing restrictions, Five Civilized Tribes.

An order removing restrictions issued pursuant to the Act of August 11, 1955 (69 Stat. 666), on its effective date shall serve to remove all jurisdiction and supervision of the Bureau of Indian Affairs over money and property held by the United States in trust for the individual Indian or held subject to restrictions against alienation imposed by the United States. The Secretary shall cause to be turned over to the Indian full ownership and control of such money and property and issue in the case of land such title document as may be appropriate: *Provided*, That the Secretary may make such provisions as he deems necessary to insure payment of money loaned to any such Indian by the Federal Government or by an Indian tribe; *And provided further*, That the interest of any lessee or permittee in any lease, contract, or permit that is outstanding when an order removing restrictions becomes effective shall be

preserved as provided in section 2(d) of the Act of August 11, 1955 (69 Stat. 666).

SALES, EXCHANGES AND CONVEYANCES OF TRUST OR RESTRICTED LANDS

§ 152.17 Sales, exchanges, and conveyances by, or with the consent of the individual Indian owner.

Pursuant to the Acts of May 27, 1902 (32 Stat. 275; 25 U.S.C. 379); May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357); March 1, 1907 (34 Stat. 1018; 25 U.S.C. 405); May 29, 1908 (35 Stat. 444; 25 U.S.C. 404); June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), as amended May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a-355d); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483); and pursuant to other authorizing acts, trust or restricted lands acquired by allotment, devise, inheritance, purchase, exchange, or gift may be sold, exchanged, and conveyed by the Indian owner with the approval of the Secretary or by the Secretary with the consent of the Indian owner.

§ 152.18 Sale with the consent of natural guardian or person designated by the Secretary.

Pursuant to the Act of May 29, 1908 (35 Stat. 444; 25 U.S.C. 404), the Secretary may, with the consent of the natural guardian of a minor, sell trust or restricted land belonging to such minor; and the Secretary may, with the consent of a person designated by him, sell trust or restricted land belonging to Indians who are minor orphans without a natural guardian, and Indians who are non compos mentis or otherwise under legal disability. The authority contained in this act is not applicable to lands in Oklahoma, Minnesota, and South Dakota, nor to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

§ 152.19 Sale by fiduciaries.

Guardians, conservators, or other fiduciaries appointed by State courts, or by tribal courts operating under approved constitutions or law and order codes, may, upon order of the court, convey with the approval of the Secretary or consent to the conveyance by the Secretary of trust or restricted land belonging to their Indian wards who are minors, non compos mentis or otherwise under legal disability. This section is subject to the exceptions contained in 25 U.S.C. 954(b).

§ 152.20 Sale by Secretary of certain land in multiple ownership.

Pursuant to the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372), if the Secretary decides that one or more of the heirs who have inherited trust land are incapable of managing their own affairs, he may sell any or all interests in that land. This authority is not applicable to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

§ 152.21 Sale or exchange of tribal land.

Certain tribal land may be sold or exchanged pursuant to the Acts of February 14, 1920 (41 Stat. 415; 25 U.S.C. 294); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); August 10, 1939 (53 Stat. 1351; 25 U.S.C. 463(e)); July 1, 1948 (62 Stat. 1214); June 4, 1953 (67 Stat. 41; 25 U.S.C. 293(a)); July 28, 1955 (69 Stat. 392), as amended August 31, 1964 (78 Stat. 747; 25 U.S.C. 608-608c); June 18, 1956 (70 Stat. 290; 25 U.S.C. 403a-2); July 24, 1956 (70 Stat. 626); May 19, 1958 (72 Stat. 121; 25 U.S.C. 463, Note); September 2, 1958 (72 Stat. 1762); April 4, 1960 (74 Stat. 13); April 29, 1960 (74 Stat. 85); December 11, 1963 (77 Stat. 349); August 11, 1964 (78 Stat. 389), and pursuant to other authorizing acts. Except as otherwise provided by law, and as far as practicable, the regulations in this part 152 shall be applicable to sale or exchanges of such tribal land.

§ 152.22 Secretarial approval necessary to convey individual-owned trust or restricted lands or land owned by a tribe.

(a) *Individual lands.* Trust or restricted lands, except inherited lands of the Five Civilized Tribes, or any interest therein, may not be conveyed without the approval of the Secretary. Moreover, inducing an Indian to execute an instrument purporting to convey any trust land or interest therein, or the offering of any such instrument for record, is prohibited and criminal penalties may be incurred. (See 25 U.S.C. 202 and 348.)

(b) *Tribal lands.* Lands held in trust by the United States for an Indian tribe, lands owned by a tribe with Federal restrictions against alienation and any other land owned by an Indian tribe may only be conveyed where specific statutory authority exists and then only with the approval of the Secretary unless the Act of Congress authorizing sale provides that approval is unnecessary. (See 25 U.S.C. 177.)

§ 152.23 Applications for sale, exchange or gift.

Applications for the sale, exchange or gift of trust or restricted land shall be filed in the form approved by the Secretary with the agency having immediate jurisdiction over the land. Applications may be approved if, after careful examination of the circumstances in each case, the transaction appears to be clearly justified in the light of the long-range best interest of the owner or owners or as under conditions set out in § 152.25(d).

§ 152.24 Appraisal.

Except as otherwise provided by the Secretary, an appraisal shall be made indicating the fair market value prior to making or approving a sale, exchange, or other transfer of title of trust or restricted land.

§ 152.25 Negotiated sales, gifts and exchanges of trust or restricted lands.

Those sales, exchanges, and gifts of trust or restricted lands specifically described in the following paragraphs (a), (b), (c), and (d) of this section may be negotiated; all other sales shall be by advertised sale, except as may be otherwise provided by the Secretary.

(a) *Consideration not less than the appraised fair market value.* Indian owners may, with the approval of the Secretary, negotiate a sale of and sell trust or restricted land for not less than the appraised fair market value:

(1) When the sale is to the United States, States, or political subdivisions thereof, or such other sale as may be for a public purpose;

(2) When the sale is to the tribe or another Indian; or

(3) When the Secretary determines it is impractical to advertise.

(b) *Exchange at appraised fair market value.* With the approval of the Secretary, Indian owners may exchange trust or restricted land, or a combination of such land and other things of value, for other lands or combinations of land and other things of value. The value of the consideration received by the Indian in the exchange must be at least substantially equal to the appraised fair market value of the consideration given by him.

(c) *Sale to coowners.* With the approval of the Secretary, Indian owners may negotiate a sale of and sell trust or restricted land to a coowner of that land. The consideration may be less than the appraised fair market value, if in the opinion of the Secretary there is a special relationship between the coowners or special circumstances exist.

(d) *Gifts and conveyances for less than the appraised fair market value.* With the approval of the Secretary, Indian owners may convey trust or restricted land, for less than the appraised fair market value or for no consideration when the prospective grantee is the owner's spouse, brother, sister, lineal ancestor of Indian blood or lineal descendant, or when some other special relationship exists between the grantor and grantee or special circumstances exist that in the opinion of the Secretary warrant the approval of the conveyance.

§ 152.26 Advertisement.

(a) Upon approval of an application for an advertised sale, notice of the sale will be published not less than 30 days prior to the date fixed for the sale unless for good cause a shorter period is authorized by the Secretary.

(b) The notice of sale will include:

(1) Terms, conditions, place, date, hour, and methods of sale, including explanation of auction procedure as set out in § 152.27(b)(2) if applicable;

(2) Where and how bids shall be submitted;

(3) A statement warning all bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders or potential bidders; and

(4) Description of tracts, all reservations to which title will be subject and any restrictions and encumbrances of

record with the Bureau of Indian Affairs and any other information that may improve sale prospects.

§ 152.27 Procedure of sale.

Advertised sales shall be by sealed bids except as otherwise provided herein.

(a)(1) Bids, conforming to the requirements set out in the advertisement of sale, along with a certified check, cashier's check, money order, or U.S. Treasury check, payable to the Bureau of Indian Affairs, for not less than 10 percent of the amount of the bid, must be enclosed in a sealed envelope marked as prescribed in the notice of sale. A cash deposit may be submitted in lieu of the above-specified negotiable instruments at the bidder's risk. Tribes submitting bids pursuant to this paragraph may guarantee the required 10 percent deposit by an appropriate resolution;

(2) The sealed envelopes containing the bids will be publicly opened at the time fixed for sale. The bids will be announced and will be appropriately recorded.

(b) The policy of the Secretary recognizes that in many instances a tribe or a member thereof has a valid interest in acquiring trust or restricted lands offered for sale.

(1) With the consent of the owner and when the notice of sale so states, the tribe or members of such tribe shall have the right to meet the high bid.

(2) Provided the tribe is not the high bidder and when one or more acceptable sealed bids are received and when so stated in the notice of sale, an oral auction may be held following the bid opening. Bidding in the auction will be limited to the tribe, and to those who submitted sealed bids at 75 percent or more of the appraised value of the land being auctioned. At the conclusion of the auction the highest bidder must increase his deposit to not less than 10 percent of his auction bid.

§ 152.28 Action at close of bidding.

(a) The officer in charge of the sale shall publicly announce the apparent highest acceptable bid. The deposits submitted by the unsuccessful bidders shall be returned immediately. The deposit submitted by the apparent successful bidder shall be held in a special account.

(b) If the highest bid received at an advertised sale is less than the appraised fair market value of the land, the Secretary with the consent of the owner may accept that bid if the amount bid approximates said appraised fair market value and in the Secretary's judgment is the highest price that may be realized in the circumstances.

(c) The Secretary shall award the bid and notify the apparent successful bidder that the remainder of the purchase price must be submitted within 30 days.

(1) Upon a showing of cause the Secretary may, in his discretion, extend the time of payment of the balance due.

(2) If the remainder of the purchase price is not paid within the time allowed, the bid will be rejected and the apparent successful bidder's 10 percent deposit will be forfeited to the landowner's use.

(d) The issuance of the patent or delivery of a deed to the purchaser will not be authorized until the balance of the purchase price has been paid, except that the fee patent may be ordered in cases where the purchaser is obtaining a loan from an agency of the Federal Government and such agency has given the Secretary a commitment that the balance of the purchase price will be paid when the fee patent is issued.

§ 152.29 Rejection of bids; disapproval of sale.

The Secretary reserves the right to reject any and all bids before the award, after the award, or at any time prior to the issuance of a patent or delivery of a deed, when he shall have determined such rejection to be in the best interests of the Indian owner.

§ 152.30 Bidding by employees.

Except as authorized by the provisions of part 140 of this chapter, no person employed in Indian Affairs shall directly or indirectly bid, make, or prepare any bid, or assist any bidder in preparing his bid. Sales between Indians, either of whom is an employee of the U.S. Government, are governed by

the provisions of part 140 of this chapter (see 25 U.S.C. 68 and 441).

§ 152.31 Cost of conveyance; payment.

Pursuant to the Act of February 14, 1920 (41 Stat. 415), as amended by the Act of March 1, 1933 (47 Stat. 1417; 25 U.S.C. 413), the Secretary may in his discretion collect from a purchaser reasonable fees for work performed or expense incurred in the transaction. The amount so collected shall be deposited to the credit of the United States as general fund receipts, except as stated in paragraph (b) of this section.

(a)(1) The amount of the fee shall be $22.50 for each transaction.

(2) The fee may be reduced to a lesser amount or may be waived, if the Secretary determines circumstances justify such action.

(b)(1) If any or all of the costs of the work performed or expenses incurred are paid with tribal funds, an alternate schedule of fees may be established, subject to approval of the Secretary, and that part of such fees deemed appropriate may be credited to the tribe.

(2) When the purchaser is the tribe which bears all or any part of such costs, the collection of the proportionate share from the tribe may be waived.

§ 152.32 Irrigation fee; payment.

Collection of all construction costs against any Indian-owned lands within Indian irrigation projects is deferred as long as Indian title has not been extinguished. (Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a)). This statute is interpreted to apply only where such land is owned by Indians either in trust or restricted status.

(a) When any person whether Indian or non-Indian acquires Indian lands in a fee simple status that are part of an Indian irrigation project he must enter into an agreement,

(1) To pay the pro rata share of the construction of the project chargeable to the land,

(2) To pay all construction costs that accrue in the future, and

(3) To pay all future charges assessable to the land which are based on the annual cost of operation and maintenance of the irrigation system.

(b) Any operation and maintenance charges that are delinquent when Indian land is sold will be deducted from the proceeds of sale unless other acceptable arrangements are made to provide for their payment prior to the approval of the sale.

(c) A lien clause covering all unpaid irrigation construction costs, past and future, will be inserted in the patent or other instrument of conveyance issued to all purchasers of restricted or trust lands that are under an Indian irrigation project.

CROSS-REFERENCE: See part 159 and part 160 and cross-references thereunder in this chapter for further regulations regarding sale of irrigable lands.

PARTITIONS IN KIND OF INHERITED ALLOTMENTS

§ 152.33 Partition.

(a) *Partition without application*. If the Secretary of the Interior shall find that any inherited trust allotment or allotments (as distinguished from lands held in a restricted fee status or authorized to be sold under the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483)), are capable of partition in kind to the advantage of the heirs, he may cause such lands to be partitioned among them, regardless of their competency, patents in fee to be issued to the competent heirs for their shares and trust patents to be issued to the incompetent heirs for the lands respectively or jointly set apart to them, the trust period to terminate in accordance with the terms of the original patent or order of extension of the trust period set out in said patent. (Act of May 18, 1916 (39 Stat. 127; 25 U.S.C. 378)). The authority contained in the Act of May 18, 1916, is not applicable to lands authorized to be sold by the Act of May 14, 1948, nor to land held in restricted fee status.

(b) *Application for partition*. Heirs of a deceased allottee may make written application, in the form approved by the Secretary, for partition of their trust or restricted land. If the Secretary finds the trust lands susceptible of partition, he may issue new patents or deeds to the heirs for the portions set aside to them. If the allotment is

held under a restricted fee title (as distinguished from a trust title), partition may be accomplished by the heirs executing deeds approved by the Secretary, to the other heirs for their respective portions.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

§152.34 Approval of mortgages and deeds of trust.

Any individual Indian owner of trust or restricted lands, may with the approval of the Secretary execute a mortgage or deed of trust to his land. Prior to approval of such mortgage or deed of trust, the Secretary shall secure appraisal information as he deems advisable. Such lands shall be subject to foreclosure or sale pursuant to the terms of the mortgage or deed of trust in accordance with the laws of the State in which the lands are located. For the purpose of foreclosure or sale proceedings under this section, the Indian owners shall be regarded as vested with unrestricted fee simple title to the lands (Act of March 29, 1956).

(70 Stat. 62; 25 U.S.C. 483a)

§152.35 Deferred payment sales.

When the Indian owner and purchaser desire, a sale may be made or approved on the deferred payment plan. The terms of the sale will be incorporated in a memorandum of sale which shall constitute a contract for delivery of title upon payment in full of the amount of the agreed consideration. The deed executed by the grantor or grantors will be held by the Superintendent and will be delivered only upon full compliance with the terms of sale. If conveyance of title is to be made by fee patent, request therefor will be made only upon full compliance with the terms of the sale. The terms of the sale shall require that the purchaser pay not less than 10 percent of the purchase price in advance as required by the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); terms for the payment of the remaining installments plus interest shall be those acceptable to the Secretary and the Indian owner. If the purchaser on any deferred payment plan makes default in the first or subsequent payments, all payments, including interest, previously made will be forfeited to the Indian owner.

PART 153—DETERMINATION OF COMPETENCY: CROW INDIANS

Sec.
153.1 Purpose of regulations.
153.2 Application and examination.
153.3 Application form.
153.4 Factors determining competency.
153.5 Children of competent Indians.
153.6 Appeals.

AUTHORITY: Sec. 12, 41 Stat. 755, 46 Stat. 1495, as amended.

SOURCE: 22 FR 10563, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§153.1 Purpose of regulations.

The regulations in this part govern the procedures in determining the competency of Crow Indians under Public Law 303, 81st Congress, approved September 8, 1949.

§153.2 Application and examination.

The Commissioner of Indian Affairs or his duly authorized representative, upon the application of any unenrolled adult member of the Crow Tribe, shall classify him by placing his name to the competent or incompetent rolls established pursuant to the act of June 4, 1920 (41 Stat. 751), and upon application shall determine whether those persons whose names now or hereafter appear on the incompetent roll shall be reclassified as competent and their names placed on the competent roll.

§153.3 Application form.

The application form shall include, among other things:

(a) The name of the applicant;

(b) His age, residence, degree of Indian blood, and education;

(c) His experience in farming, cattle raising, business, or other occupation (including home-making);

(d) His present occupation, if any;

(e) A statement concerning the applicant's financial status, including his average earned and unearned income for the last two years from restricted leases and from other sources, and his outstanding indebtedness to the United States, to the tribe, or to others;

(f) A description of his property and its value, including his allotted and inherited lands; and

(g) The name of the applicant's spouse, if any, and the names of his minor children, if any, and their ages, together with a statement regarding the land, allotted and inherited, held by each.

§ 153.4 Factors determining competency.

Among the matters to be considered by the Commissioner of Indian Affairs in determining competency are the amount of the applicant's indebtedness to the tribe, to the United States Government, and to others; whether he is a public charge or a charge on friends and relatives, or will become such a charge, by reason of being classed as competent; and whether the applicant has demonstrated that he possesses the ability to take care of himself and his property, to protect the interests of himself and his family, to lease his land and collect the rentals therefrom, to lease the land of his minor children, to prescribe in lease agreements those provisions which will protect the land from deterioration through over-grazing and other improper practices, and to assume full responsibility for obtaining compliance with the terms of any lease.

§ 153.5 Children of competent Indians.

Children of competent Indians who have attained or upon attaining their majority shall automatically become competent except any such Indian who is declared incompetent by a court of competent jurisdiction or who is incompetent under the laws of the State within which he resides.

§ 153.6 Appeals.

An appeal to the Secretary of the Interior may be made within 30 days from the date of notice to the applicant of the decision of the Commissioner of Indian Affairs.

PART 154—OSAGE ROLL, CERTIFICATE OF COMPETENCY

Sec.

154.1 Definitions.
154.2 Preparation of competency roll.
154.3 Determination of age and quantum of Indian blood.
154.4 Notification; disagreement and decision.
154.5 Issuance of certificate of competency.
154.6 Costs of recording certificates of competency.
154.7 Delivery of cash and securities.

AUTHORITY: 62 Stat. 18; 25 U.S.C. 331 note.

SOURCE: 22 FR 10563, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 154.1 Definitions.

When used in the regulations in this part the following words or terms shall have the meaning shown below:

(a) ''Secretary'' means the Secretary of the Interior.

(b) ''Commissioner'' means the Commissioner of Indian Affairs.

(c) ''Superintendent'' means the superintendent of the Osage Agency.

(d) ''Person'' means an unallotted member of the Osage Tribe of less than one-half Indian blood who has not received a certificate of competency.

§ 154.2 Preparation of competency roll.

The superintendent shall cause a roll to be compiled of all persons who have attained the age of 21 years, and shall add thereto the names of minors as they attain the age of 21 years. The roll shall include the names, last known address, date of birth, and the total quantum of Osage blood and non-Osage Indian blood of each person listed thereon.

§ 154.3 Determination of age and quantum of Indian blood.

(a) The date of birth as shown by the census records of the Osage Agency shall be accepted as prima facie evidence in determining the age of a person.

(b) The total quantum of Indian blood of a person shall be computed and determined as follows:

(1) When the parents of a person are enrolled members, or when one parent is an enrolled member and the other parent is a descendant of an enrolled member, or when both parents are descendants of enrolled members, or when one parent is an enrolled member of descendant of an enrolled member of the Osage Tribe, and the other parent

is of non-Indian blood, the Osage Agency register of Indian families for the year ending December 31, 1901, shall be accepted as prima facie evidence of the quantum of Indian blood.

(2) When one parent of a person is an enrolled member, or the descendant of an enrolled member of the Osage Tribe, and the other parent is of non-Osage blood, the Osage Agency register of Indian families for the year ending December 31, 1901, shall be accepted as prima facie evidence in determining the quantum of Osage Indian blood.

(3) When one parent of a person is of non-Osage Indian blood, the certification of the superintendent or other officer in charge of the Indian Agency having jurisdiction over the affairs of the tribe of which the non-Osage Indian parent is a member or descendant of a member, as to such parent's quantum of Indian blood, shall be accepted as prima facie evidence in determining the quantum of non-Osage Indian blood.

(4) When the non-Osage parent of a person is alleged to be of Indian blood, and the superintendent or other officer in charge of the Indian agency having jurisdiction over the affairs of the tribe of which such parent is an alleged member or descendant of a member thereof, is unable to certify as to the quantum of Indian blood of such parent, affidavits as to such parent's quantum of Indian blood, when properly executed by two qualified individuals, may be accepted.

§154.4 Notification; disagreement and decision.

When the superintendent shall have determined that a person, 21 years or over, is of less than one-half Indian blood, he shall notify such person of his finding and inform him that if objection is not received within 20 days from the date of notification, a certificate of competency will be issued. If the person claims to be of one-half or more Indian blood and that a certificate of competency should not be issued, he should submit to the superintendent two affidavits or other evidence in support of his claim. The claim, affidavits or other evidence of the person as to his quantum of blood shall be submitted to the Commissioner of Indian Affairs for a ruling before the certificate of competency is issued.

§154.5 Issuance of certificate of competency.

A certificate of competency shall be issued by the superintendent on Form 5–182[1] to each person heretofore or hereafter attaining the age of 21 years and who has been determined to be of less than one-half Indian blood. Such certificate shall be recorded with the county clerk of Osage County, Oklahoma, before delivering the same to the person entitled thereto.

§154.6 Costs of recording certificates of competency.

The superintendent may expend the surplus funds of a person to make direct payments of the cost of recording a certificate of competency. If the person to whom a certificate of competency is issued has no surplus funds, the cost of recording the same shall be paid from Osage tribal funds.

§154.7 Delivery of cash and securities.

After issuance and recordation of a certificate of competency as authorized by the regulations in this part, the superintendent shall deliver to the individual named therein, or the legal guardian thereof, the original copy of the certificate of competency, together with all cash, stocks and bonds credited to the account of such individual upon the books of the Osage Agency, and obtain a receipt therefor.

PART 156—REALLOTMENT OF LANDS TO UNALLOTTED INDIAN CHILDREN[2]

Sec.

156.1 Relinquishment of original patent.
156.2 Relinquishment when original patent has been lost or destroyed.

AUTHORITY: Sec. 3, 36 Stat. 856; 25 U.S.C. 408.

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[1] Filed with the original document. Copies may be obtained upon request at the Bureau of Indian Affairs, Department of the Interior, Washington, DC.

[2] The reallotment provisions herein dealt with are not applicable on reservations subject to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984, as amended; 25 U.S.C. 461–479).

CROSS REFERENCES: For Bureau of Land Management regulations pertaining to allotments to Indians and Eskimos, see 43 CFR parts 2530 and 2560. For Bureau of Land Management regulations pertaining to restored and ceded Indian lands, see 43 CFR part 1400.

§ 156.1 Relinquishment of original patent.

To effect a reallotment under section 3 of the Act of June 25, 1910 (36 Stat. 856; 25 U.S.C. 408), the Indian owner shall endorse on the original patent a relinquishment of all lands described therein and explain the purpose of the relinquishment. The relinquishment shall name the child or children to be reallotted and follow with descriptions by legal subdivisions of the land. If a part of the allotment is being retained by the Indian owner, the relinquishment and application for reallotment may describe only the tract to be reallotted. The relinquishment must be signed by the original allottee or owner of the land involved and be acknowledged before a superintendent of an Indian agency or an officer authorized to administer oaths. The signatures of those who cannot write must be by thumb mark and be witnessed.

[22 FR 10564, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 156.2 Relinquishment when original patent has been lost or destroyed.

When the original patent has been lost or destroyed, the relinquishment and application for reallotment may be submitted in the form of a letter, which must be accompanied by an affidavit showing the loss or destruction of the original patent. If no patent has been issued, that fact should be set out in the letter.

[22 FR 10564, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

PART 158—OSAGE LANDS

Sec.

158.51 Definitions.
158.52 Application for change in designation of homestead.
158.53 Order to change designation of homestead.
158.54 Exchanges of restrictive lands.
158.55 Institution of partition proceedings.
158.56 Partition records.
158.57 Approval of deeds or other instruments vesting title on partition and payment of costs.
158.58 Disposition of proceeds of partition sales.

AUTHORITY: 5 U.S.C. 301. Interpret or apply 62 Stat. 18; 25 U.S.C. 331 note.

SOURCE: 22 FR 10565, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 158.51 Definitions.

When used in this part:

(a) ''Homestead'' means the restricted nontaxable lands, not exceeding 160 acres, allotted to an enrolled member of the Osage Tribe pursuant to the act of June 28, 1906 (34 Stat. 539), or the restricted surplus lands designated in lieu thereof pursuant to the act of May 25, 1918 (40 Stat. 578).

(b) ''Surplus land'' means those restricted lands, other than the homestead, allotted to an enrolled member of the Osage Tribe pursuant to the act of June 28, 1906 (34 Stat. 539).

§ 158.52 Application for change in designation of homestead.

Any Osage allottee or the legal guardian thereof may make application to change his homestead for an equal area of his surplus land. The application shall give in detail the reasons why such change is desired and shall be submitted to the Osage Indian Agency on the form ''Application to Change Designation of Homestead.''

§ 158.53 Order to change designation of homestead.

The application of an Osage allottee, or his legal guardian, may be approved by the Secretary of the Interior, or his authorized representative, and an order issued to change designation of homestead, if it is found that the applicant owns an equal area of surplus land. The expense of recording the order shall be borne by the applicant. The order to change designation shall be made on the form ''Order to Change Designation of Homestead.''

§ 158.54 Exchanges of restrictive lands.

Upon written application of the Indians involved, the exchange of restricted lands between adult Indians,

and between adult Indians and non-Indians, may be approved by the Secretary of the Interior, or his authorized representative. Title to all lands acquired under this part by an Indian who does not have a certificate of competency shall be taken by deed containing a clause restricting alienation or encumbrance without the consent of the Secretary, or his authorized representative. In case of differences in the appraised value of lands under consideration for exchange, the application of an Indian for funds to equalize such differences may be approved to the extent authorized by §117.8 of this chapter.

§158.55 Institution of partition proceedings.

(a) Prior authorization should be obtained from the Secretary, or his authorized representative, before the institution of proceedings to partition the lands of deceased Osage allottees in which any interest is held by an Osage Indian not having a certificate of competency. Requests for authority to institute such partition proceedings shall contain a description of the lands involved, the names of the several owners and their respective interests and the reasons for such court action. Authorization may be given for the institution of partition proceedings in a court of competent jurisdiction when it appears to the best interest of the Indians involved to do so and the execution of voluntary exchange deeds is impracticable.

(b) When it appears to the best interest of the Indians to do so, the Secretary's, or his authorized representative's, authorization to institute partition proceedings may require that title to the lands be quieted in the partition action in order that the deeds issued pursuant to the proceedings shall convey good and merchantable title to the grantee therein. (See section 6, 37 Stat. 87.)

§158.56 Partition records.

Upon completion of an action in partition, a copy of the judgment roll showing schedule of costs and owelty moneys having accrued to or from the several parties, together with deeds, or other instruments vesting title on partition, in triplicate, shall be furnished to the Osage Agency. The original allotment number shall follow the legal description on all instruments vesting title. When a grantee is a member of the Osage Tribe who has not received a certificate of competency, deeds or other instruments vesting title shall contain the following clause against alienation:

> Subject to the condition that while title to the above-described lands shall remain in the grantee or his Osage Indian heirs or devisees who do not have certificates of competency, the same shall not be alienated or encumbered without approval of the Secretary of the Interior or his authorized representative.

§158.57 Approval of deeds or other instruments vesting title on partition and payment of costs.

Upon completion of the partition proceedings in accordance with the law and in conformity with the regulations in this part, the Secretary, or his authorized representative, may approve the deeds, or other instruments vesting title on partition, and may disburse from the restricted (accounts) funds of the Indians concerned, such amounts as may be necessary for payment of their share of court costs, attorney fees, and owelty moneys.

§158.58 Disposition of proceeds of partition sales.

Owelty moneys due members of the Osage Tribe who do not have certificates of competency shall be paid into the Treasury of the United States and placed to the credit of the Indians upon the same conditions as attach to segregated shares of the Osage national fund.

PART 159—SALE OF IRRIGABLE LANDS, SPECIAL WATER CONTRACT REQUIREMENTS

CROSS REFERENCES: For additional regulations pertaining to the payment of fees and charges in connection with the sale of irrigable lands, see part 160 and §§134.4 and 152.21 of this chapter. For general regulations pertaining to the issuance of patents in fee, see part 152 of this chapter.

§ 159.1 Conditions of contract.

(a) The form of contract (Form 5–462b)[1] for sale of irrigable lands specifically provides that the purchaser will obligate and pay on a per acre basis all irrigation charges assessed or to be assessed against the land purchased including accrued assessment, which accrued assessment shall be paid prior to the approval of the sale, and for the payment of the construction and operation and maintenance assessments on the due dates of each year. The agreement is to be acknowledged and recorded in the county records in which county the land is situated. The charges incidental to the recording of the instrument shall be paid by the purchaser at the time of executing the agreement.

(b) A strict compliance with the terms of paragraph (a) of this section is absolutely necessary and required.

(Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. Interprets or applies sec. 1, 41 Stat. 409; 25 U.S.C. 386)

[22 FR 10566, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

NOTE: On May 12, 1921, Circular No. 1677, re sale of irrigable lands, was addressed to all superintendents. It was pointed out therein that the collection of irrigation construction charges was required by the terms of an act approved February 14, 1920 (41 Stat. 409; 25 U.S.C. 386), and that in addition to the construction charge there was an operation and maintenance charge assessable annually that must be paid by the landowners benefited; furthermore, that the purpose of this circular was to point out to the superintendents the necessity of advising prospective purchasers that irrigation charges must be paid and that a so-called paid-up water right was not conveyed with the land. A form of agreement to be executed by the prospective purchaser accompanied this circular.

It has been brought to the attention of the Bureau that irrigation construction charges and operation and maintenance charges have accrued against irrigable allotments prior to the time of their being advertised for sale and that the superintendents have failed to provide for payment of the accrued irrigation charges, with the result that no means are apparent for their collection.

With a view of preventing any future misunderstanding the form of contract accompanying Circular No. 1677 has been redrafted and Form 5–462b assigned to it. The circular has been designated ''No. 1677a.''

[1] Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

PART 160—INCLUSION OF LIENS IN ALL PATENTS AND INSTRUMENTS EXECUTED

Sec.
160.1 Liens.
160.2 Instructions.
160.3 Leases to include description of lands.
160.4 Prompt payment of irrigation charges by lessees.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385.

SOURCE: 22 FR 10566, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 160.1 Liens.

The act of March 7, 1928 (45 Stat. 210; 25 U.S.C. 387) creates a first lien against irrigable lands under all Indian irrigation projects where the construction, operation and maintenance costs of such projects remain unpaid and are reimbursable, and directs that such lien shall be recited in any patent or instrument issued for such lands to cover such unpaid charges. Prior to the enactment of this legislation similar liens had been created by legislative authority against irrigable lands of the projects on the Fort Yuma, Colorado River, and Gila River Reservations, in Arizona; Blackfeet, Fort Peck, Flathead, Fort Belknap, and Crow Reservations, Mont.; Wapato project, Yakima Reservation, Wash.; the irrigable lands on the Colville Reservation within the West Okanogan irrigation district, Washington, and the Fort Hall Reservation, Idaho. This legislation, therefore, extends protection similar to that existing in the legislation applicable to the projects on the reservations above mentioned.

CROSS REFERENCES: For operation and maintenance charges and construction costs, see parts 174, 134, and 137 of this chapter.

§ 160.2 Instructions.

All superintendents and other officers are directed to familiarize themselves with this provision of law, and in all cases involving the issuance of patents or deeds direct to the Indian or purchaser of Indian allotments embracing irrigable lands, they will recite in

the papers forwarded to the Department for action the fact that the lands involved are within an irrigation project (giving the name) and accordingly are subject to the provisions of this law. This requirement will be in addition to the existing regulations requiring the superintendents in case of sales of irrigable lands to obtain from the project engineer a written statement relative to the irrigability of the lands to be sold, and whether or not there are any unpaid irrigation charges, together with the estimated per acre construction cost assessable against the land involved in the sale. Each sale will also be accompanied by contract executed in accordance with regulations obligating the purchaser to pay the accrued charges, namely, construction, operation, and maintenance, prior to the approval of the sale and to assume and pay the unassessed irrigation charges in accordance with regulations promulgated by the Secretary of the Interior.

CROSS REFERENCES: For additional regulations pertaining to the payment of fees and charges in connection with the sale of irrigable lands, see part 159 and §§134.4 and 152.21 of this chapter.

§160.3 Leases to include description of lands.

It is important, also, for superintendents in leasing irrigable lands to present to the project engineer lists containing descriptions of the lands involved for his approval of the irrigable acreage and for checking as to whether or not such lands are in fact irrigable under existing works. Strict compliance with this section is required for the purpose of avoiding error.

§160.4 Prompt payment of irrigation charges by lessees.

Superintendents will also see that irrigation charges are promptly paid by lessees, and where such charges are not so paid take appropriate and prompt action for their collection. Such unpaid charges are a lien against the land, and accordingly any failure on the part of the superintendents to collect same increases the obligation against the land.

PART 162—LEASING AND PERMITTING

Sec.
162.1 Definitions.
162.2 Grants of leases by Secretary.
162.3 Grants of leases by owners or their representatives.
162.4 Use of land of minors.
162.5 Special requirements and provisions.
162.6 Negotiation of leases.
162.7 Advertisement.
162.8 Duration of leases.
162.9 Ownership of improvements.
162.10 Unitization for leasing.
162.11 Conservation and land use requirement.
162.12 Subleases and assignments.
162.13 Payment of fees and drainage and irrigation charges.
162.14 Violation of lease.
162.15 Crow Reservation.
162.16 Fort Belknap Reservation.
162.17 Cabazon, Augustine, and Torres-Martinez Reservations, California.
162.18 Colorado River Reservation.
162.19 Grazing units excepted.
162.20 San Xavier and Salt River Pima-Maricopa Reservations.

AUTHORITY: 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2 and 9. Interpret or apply sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, secs. 1, 2, 31 Stat. 229, 246, secs. 7, 12, 34 Stat. 545, 34 Stat. 1015, 1034, 35 Stat. 70, 95, 97, sec. 4, 36 Stat. 856, sec. 1, 39 Stat. 128, 41 Stat. 415, as amended, 751, 1232, sec. 17, 43 Stat. 636, 641, 44 Stat. 658, as amended, 894, 1365, as amended, 47 Stat. 1417, sec. 17, 48 Stat. 984, 988, 49 Stat. 115, 1135, sec. 55, 49 Stat. 781, sec. 3, 49 Stat. 1967, 54 Stat. 745, 1057, 60 Stat. 308, secs. 1, 2, 60 Stat. 962, sec. 5, 64 Stat. 46, secs. 1, 2, 4, 5, 6, 64 Stat. 470, 69 Stat. 539, 540, 72 Stat. 968; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 413, 415, 415a, 415b, 415c, 415d, 477, 635.

SOURCE: 26 FR 10966, Nov. 23, 1961, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§162.1 Definitions.

As used in this part:

(a) ''Secretary'' means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) ''Individually owned land'' means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual

Indians subject to Federal restrictions against alienation or encumbrance.

(c) ''Tribal land'' means land or any interest therein held by the United States in trust for a tribe, band, community, group or pueblo of Indians, and land that is held by a tribe, band, community, group or pueblo of Indians subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 476). This term also includes assignments of tribal land. Unless the terms of the assignment provide for the leasing of the land by the holder of the assignment, the tribe must join with the assignee in the grant of a lease.

(d) ''Government land'' means land, other than tribal land, acquired or reserved by the United States for Indian Bureau administrative purposes which are not immediately needed for the purposes for which they were acquired or reserved and land transferred to or placed under the jurisdiction of the Bureau of Indian Affairs.

(e) ''Permit'' means a privilege revocable at will in the discretion of the Secretary and not assignable, to enter on and use a specified tract of land for a specified purpose. The terms ''lease'', ''lessor'', and ''lessee'', when used in this part include, when applicable, ''permit'', ''permitter'', and ''permittee'', respectively.

§ 162.2 Grants of leases by Secretary.

(a) The Secretary may grant leases on individually owned land on behalf of:

(1) Persons who are non compos mentis;

(2) Orphaned minors;

(3) The undetermined heirs of a decedent's estate;

(4) The heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees; and

(5) Indians who have given the Secretary written authority to execute leases on their behalf.

(b) The Secretary may grant leases on the individually owned land of an adult Indian whose whereabouts is unknown, on such terms as are necessary to protect and preserve such property.

(c) The Secretary may grant permits on Government land.

§ 162.3 Grants of leases by owners or their representatives.

The following may grant leases:

(1) Adults, other than those non compos mentis,

(2) Adults other than those non compos mentis, on behalf of their minor children, and on behalf of minor children to whom they stand in loco parentis when such children do not have a legal representative,

(3) The guardian, conservator or other fiduciary, appointed by a state court or by a tribal court operating under an approved constitution or law and order code, of a minor or persons who are non compos mentis or are otherwise under legal disability,

(4) Tribes or tribal corporations acting through their appropriate officials.

§ 162.4 Use of land of minors.

The natural or legal guardian, or other person standing in loco parentis of minor children who have the care and custody of such children may use the individually owned land of such children during the period of minority without charge for the use of the land if such use will enable such person to engage in a business or other enterprise which will be beneficial to such minor children.

§ 162.5 Special requirements and provisions.

(a) All leases made pursuant to the regulations in this part shall be in the form approved by the Secretary and subject to his written approval.

(b) Except as otherwise provided in this part no lease shall be approved or granted at less than the present fair annual rental.

(1) An adult Indian owner of trust or restricted land may lease his land for

religious, educational, recreational or other public purposes to religious organizations or to agencies of the Federal, State or local government at a nominal rental. Such adult Indian may lease land to members of his immediate family with or without rental consideration. For purposes of this section, ''immediate family'' is defined as the Indian's spouse, brothers, sisters, lineal ancestors, or descendants.

(2) In the discretion of the Secretary, tribal land may be leased at a nominal rental for religious, educational, recreational, or other public purposes to religious organizations or to agencies of Federal, State, or local governments; for purposes of subsidization for the benefit of the tribe; and for homesite purposes to tribal members provided the land is not commercial or industrial in character.

(3) Leases may be granted or approved by the Secretary at less than the fair annual rental when in his judgment such action would be in the best interest of the landowners.

(c) Unless otherwise provided by the Secretary a satisfactory surety bond will be required in an amount that will reasonably assure performance of the contractual obligations under the lease. Such bond may be for the purpose of guaranteeing:

(1) Not less than one year's rental unless the lease contract provides that the annual rental shall be paid in advance.

(2) The estimated construction cost of any improvement to be placed on the land by the lessee.

(3) An amount estimated to be adequate to insure compliance with any additional contractual obligations.

(d) The lessee may be required to provide insurance in an amount adequate to protect any improvements on the leased premises; the lessee may also be required to furnish appropriate liability insurance, and such other insurance as may be necessary to protect the lessor's interest.

(e) No lease shall provide the lessee a preference right to future leases nor shall any lease contain provisions for renewal, except as otherwise provided in this part. No lease shall be entered into more than 12 months prior to the commencement of the term of the lease. Except with the approval of the Secretary no lease shall provide for payment of rent in advance of the beginning of the annual use period for which such rent is paid. The lease contract shall contain provisions as to the dates rents shall become due and payable.

(f) Leases granted or approved under this part shall contain provisions as to whether payment of rentals is to be made direct to the owner of the land or his representative or to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

(g) All leases issued under this part shall contain the following provisions:

(1) While the leased premises are in trust or restricted status, all of the lessee's obligations under this lease, and the obligations of his sureties, are to the United States as well as to the owner of the land.

(2) Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified of any such change in the status of the land.

(3) The lessee agrees that he will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

(h) Leases granted or approved under this part on individually owned lands which provide for payment of rental direct to the owner or his representative shall contain the following provisions:

(1) In the event of the death of the owner during the term of this lease and while the leased premises are in trust or restricted status, all rentals remaining due or payable to the decedent or his representative under the provisions of the lease shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

(2) While the leased premises are in trust or restricted status, the Secretary may in his discretion suspend the direct rental payment provisions of this lease in which event the rentals

shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

§ 162.6 Negotiation of leases.

(a) Leases of individually owned land or tribal land may be negotiated by those owners or their representatives who may execute leases pursuant to § 162.3.

(b) Where the owners of a majority interest, or their representatives, who may grant leases under § 162.3, have negotiated a lease satisfactory to the Secretary he may join in the execution of the lease and thereby commit the interests of those persons in whose behalf he is authorized to grant leases under § 162.2(a) (1), (2), (3), and (5).

(c) Where the Secretary may grant leases under § 162.2 he may negotiate leases when in his judgment the fair annual rental can thus be obtained.

§ 162.7 Advertisement.

Except as otherwise provided in this part, prior to granting a lease or permit as authorized under § 162.2 the Secretary shall advertise the land for lease. Advertisements will call for sealed bids and will not offer preference rights.

§ 162.8 Duration of leases.

Leases granted or approved under this part shall be limited to the minimum duration, commensurate with the purpose of the lease, that will allow the highest economic return to the owner consistent with prudent management and conservation practices, and except as otherwise provided in this part shall not exceed the number of years provided for in this section. Except for those leases authorized by § 162.5(b)(1) and (2), unless the consideration for the lease is based primarily on percentages of income produced by the land, the lease shall provide for periodic review, at not less than five-year intervals, of the equities involved. Such review shall give consideration to the economic conditions at the time, exclusive of improvement or development required by the contract or the contribution value of such improvements. Any adjustments of rental resulting from such review may be made by the Secretary where he has the authority to grant leases, otherwise the adjustment must be made with the written concurrence of the owners and the approval of the Secretary.

(a) Leases for public, religious, educational, recreational, residential, or business purposes shall not exceed 25 years but may include provisions authorizing a renewal or an extension for one additional term of not to exceed 25 years, except such leases of land on the Hollywood (formerly Dania) Reservation, Fla.; the Navajo Reservation, Ariz.; N. Mex., and Utah; the Palm Springs Reservation, Calif.; the Southern Ute Reservation, Colo.; the Fort Mohave Reservation, Calif., Ariz., and Nev.; the Pyramid Lake Reservation, Nev.; the Gila River Reservation, Ariz.; the San Carlos Apache Reservation, Ariz.; the Spokane Reservation, Wash.; the Hualapai Reservation, Ariz.; the Swinomish Reservation, Wash.; the Pueblos of Cochiti, Pojoaque, Tesuque, and Zuni, N. Mex.; and land on the Colorado River Reservation, Ariz., and Calif., as stated in § 162.18; which leases may be made for terms of not to exceed 99 years.

(b) Leases may be made for 25 years for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops. To determine whether a long term lease is justified, it is necessary to give consideration to the nature of the crop to be grown, including the feasibility of growing the proposed crop. The amount or substantially of the investment, as well as the necessity of such an investment in order to grow the proposed crop, are also elements to consider in evaluating the term of the proposed lease.

(c) Farming leases not granted for the purpose of growing specialized crops shall not exceed five years for dry-farming land or ten years for irrigable land.

(d) Grazing leases which require substantial development or improvement of the land shall not exceed ten years.

(e) Leases granted by the Secretary pursuant to § 162.2(a)(3) shall be for a

term of not to exceed two years except as otherwise provided in § 162.6(b).

[26 FR 10966, Nov. 23, 1961, as amended at 29 FR 2542, Feb. 18, 1964; 34 FR 3686, Mar. 1, 1969. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 162.9 Ownership of improvements.

Improvements placed on the leased land shall become the property of the lessor unless specifically excepted therefrom under the terms of the lease. The lease shall specify the maximum time allowed for removal of any improvements so excepted.

§ 162.10 Unitization for leasing.

Where it appears advantageous to the owners and advantageous to the operation of the land a single lease contract may include more than one parcel of land in separate ownerships, tribal or individual, provided the statutory authorities and other applicable requirements of this part are observed.

§ 162.11 Conservation and land use requirement.

Farming and grazing operations conducted under leases granted or approved under this part shall be conducted in accordance with recognized principles of good practice and prudent management. Land use stipulations or conservation plans necessary to define such use shall be incorporated in and made a part of the lease.

§ 162.12 Subleases and assignments.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a sublease, assignment, amendment or encumbrance of any lease or permit issued under this part may be made only with the approval of the Secretary and the written consent of all parties to such lease or permit, including the surety or sureties.

(b) With the consent of the Secretary, the lease may contain a provision authorizing the lessee to sublease the premises, in whole or in part, without further approval. Subleases so made shall not serve to relieve the sublessor from any liability nor diminish any supervisory authority of the Secretary provided for under the approved lease.

(c) With the consent of the Secretary, the lease may contain provisions authorizing the lessee to encumber his leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises. The encumbrance instrument, must be approved by the Secretary. If a sale or foreclosure under the approved encumbrance occurs and the encumbrancer is the purchaser, he may assign the leasehold without the approval of the Secretary or the consent of the other parties to the lease, provided, however, that the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the encumbrancer, approval by the Secretary of any assignment will be required, and such purchaser will be bound by the terms of the lease and will assume in writing all the obligations thereunder.

(d) With the consent of the Secretary, leases of tribal land to individual members of the tribe or to tribal housing authorities may contain provisions permitting the assignment of the lease without further consent or approval where a lending institution or an agency of the United States makes, insures or guarantees a loan to an individual member of the tribe or to a tribal housing authority for the purpose of providing funds for the construction of housing for Indians on the leased premises; provided, the leasehold has been pledged as security for the loan and the lender has obtained the leasehold by foreclosure or otherwise. Such leases may with the consent of the Secretary also contain provisions permitting the lessee to assign the lease without further consent or approval.

[26 FR 10966, Nov. 23, 1961, as amended at 29 FR 2542, Feb. 18, 1964. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 162.13 Payment of fees and drainage and irrigation charges.

(a) Except as provided in part 174 of this chapter, any lease covering lands within an irrigation project or drainage district shall require the lessee to pay annually on or before the due date, during the term of the lease and in the amounts determined, all charges assessed against such lands. Such charges

shall be in addition to the rental payments prescribed in the lease. All payments of such charges and penalties shall be made to the official designated in the lease to receive such payments.

(b) Unless otherwise provided in this part or by the Secretary, fees based upon the annual rental payable under the lease shall be collected on each lease, sublease, assignment, transfer, renewal, extension, modification, or other instrument issued in connection with the leasing or permitting of restricted lands under the regulations in this part.

(1) Except where all or any part of the expenses of the work are paid from tribal funds, in which event an additional or alternate schedule of fees may be established subject to the approval of the Secretary, the fee to be paid shall be as follows:

Rental	*Percent*
On the first $500	3
On the next $4,500	2
On all rental above $5,000	1

In no event shall the fee be less than $2.00 nor exceed $250.

(2) In the case of percentage rental leases, the fee shall be calculated on the basis of the guaranteed minimum rental. Where rental consists of a stated annual cash rental in addition to a percentage rental, the estimated revenue anticipated from the percentage rental shall be mutually agreed upon solely for the purpose of fixing the fee. The fee to be collected in case of crop-share or other special consideration leases or permits shall be based on an estimate of the cash rental value of the acreage, or the estimated value of the lessor's share of the crops. No fees so collected shall be refunded.

§ 162.14 Violation of lease.

Upon a showing satisfactory to the Secretary that there has been a violation of the lease or the regulations in this part, the lessee shall be served with written notice setting forth in detail the nature of the alleged violation and allowing him ten days from the date of receipt of notice in which to show cause why the lease should not be cancelled. The surety or sureties shall be sent a copy of each such notice. If within the ten-day period, it is determined that the breach may be corrected and the lessee agrees to take the necessary corrective measures, he will be given an opportunity to carry out such measures and shall be given a reasonable time within which to take corrective action to cure the breach. If the lessee fails within such reasonable time to correct the breach or to furnish satisfactory reasons why the lease should not be cancelled, the lessee shall forthwith be notified in writing of the cancellation of the lease and demands shall be made for payment of all obligations and for possession of the premises. The notice of cancellation shall inform the lessee of his right to appeal pursuant to part 2 of this chapter. Where breach of contract can be satisfied by the payment of damages, the Secretary may approve the damage settlement between the parties to the lease, or where the Secretary has granted the lease, he may accept the damage settlement. With the consent of the Secretary, leases of tribal land to individual members of the tribe or to tribal housing authorities for the purpose of providing lands on which housing for Indians is to be constructed, may contain a provision prohibiting the cancellation or termination of the lease during the period that a loan, loan insurance, or loan guarantee is in effect without the approval of the lender or the agency of the United States which has made, insured or guaranteed the loan for the construction of housing on the leased premises.

[29 FR 2542, Feb. 18, 1964. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 162.15 Crow Reservation.

(a) Notwithstanding the regulations in other sections of this part 162, Crow Indians classified as competent under the Act of June 4, 1920 (41 Stat. 751), as amended, may lease their trust lands and the trust lands of their minor children for farming or grazing purposes without the approval of the Secretary pursuant to the Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80). However, at their election Crow Indians classified as competent may authorize the Secretary to lease, or assist in the leasing of such lands, and an appropriate notice of such action shall be made a

matter of record. When this prerogative is exercised, the general regulations contained in this part 162 shall be applicable. Approval of the Secretary is required on leases signed by Crow Indians not classified as competent or made on inherited or devised trust lands owned by more than five competent devisees or heirs.

(b) The Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80), provides that no lease for farming or grazing purposes shall be made for a period longer than five years, except irrigable lands under the Big Horn Canal; which may be leased for periods of ten years. No such lease shall provide the lessee a preference right to future leases which, if exercised, would thereby extend the total period of encumbrance beyond the five or ten years authorized by law.

(c) All leases entered into by Crow Indians classified as competent, under the above-cited special statutes, must be recorded at the Crow Agency. Such recording shall constitute notice to all persons. Under these special statutes, Crow Indians classified as competent are free to lease their property within certain limitations. The five-year (ten-year in the case of lands under the Big Horn Canal) limitation is intended to afford a protection to the Indians. The essence of this protection is the right to deal with the property free, clear, and unencumbered at intervals at least as frequent as those provided by law. If lessees are able to obtain new leases long before the termination of existing leases, they are in a position to set their own terms. In these circumstances lessees could perpetuate their leaseholds and the protection of the statutory limitations as to terms would be destroyed. Therefore, in implementation of the foregoing interpretation, any lease which, on its face, is in violation of statutory limitations or requirements, and any grazing lease executed more than 12 months, and any farming lease executed more than 18 months, prior to the commencement of the term thereof or any lease which purports to cancel an existing lease with the same lessee as of a future date and take effect upon such cancellation will not be recorded. Under a Crow tribal program, approved by the Department of the Interior, competent Crow Indians may, under certain circumstances, enter into agreements which require that, for a specified term, their leases be approved. Information concerning whether a competent Crow Indian has executed such an instrument is available at the office of the Superintendent of the Crow Agency, Bureau of Indian Affairs, Crow Agency, Montana. Any lease entered into with a competent Crow Indian during the time such instrument is in effect and which is not in accordance with such instrument will be returned without recordation.

(d) Where any of the following conditions are found to exist, leases will be recorded but the lessee and lessor will be notified upon discovery of the condition:

(1) The lease in single or counterpart form has not been executed by all owners of the land described in the lease,

(2) There is, of record, a lease on the land for all or a part of the same term,

(3) The lease does not contain stipulations requiring sound land utilization plans and conservation practices, or

(4) There are other deficiencies such as, but not limited to, erroneous land descriptions, and alterations which are not clearly endorsed by the lessor.

(e) Any adult Crow Indian classified as competent shall have the full responsibility for obtaining compliance with the terms of any lease made by him pursuant to this section. This shall not preclude action by the Secretary to assure conservation and protection of these trust lands.

(f) Leases made by competent Crow Indians shall be subject to the right to issue permits and leases to prospect for, develop, and mine oil, gas, and other minerals, and to grant rights-of-way and easements, in accordance with applicable law and regulations. In the issuance or granting of such permits, leases, rights-of-way or easements due consideration will be given to the interests of lessees and to the adjustment of any damages to such interests. In the event of a dispute as to the amount

of such damage, the matter will be referred to the Secretary whose determination will be final as to the amount of said damage.

[29 FR 473, Jan. 18, 1964. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 162.16 Fort Belknap Reservation.

Not to exceed 20,000 acres of allotted and tribal lands (nonirrigable as well as irrigable) on the Fort Belknap Reservation in Montana may be leased for the culture of sugar beets and other crops in rotation for terms not exceeding 10 years.

§ 162.17 Cabazon, Augustine, and Torres-Martinez Reservations, California.

(a) Upon a determination by the Secretary that the owner or owners are not making beneficial use thereof, restricted lands on the Cabazon, Augustine, and Torres-Martinez Indian Reservations which are or may be irrigated from distribution facilities administered by the Coachella Valley County Water District in Riverside County, California, may be leased by the Secretary in accordance with the regulations in this part for the benefit of the owner or owners.

(b) All leases granted or approved on restricted lands of the Cabazon, Augustine, and Torres-Martinez Indian Reservations shall be filed for record in the office of the country recorder of the county in which the land is located, the cost thereof to be paid by the lessee. A copy of each such lease shall be filed by the lessee with the Coachella Valley County Water District or such other irrigation or water district within which the leased lands are located. All such leases shall include a provision that the lessee, in addition to the rentals provided for in the lease, shall pay all irrigation charges properly assessed against the land which became payable during the term of the lease. Act of August 25, 1950 (64 Stat. 470); Act of August 28, 1958 (72 Stat. 968).

§ 162.18 Colorado River Reservation.

The Act of April 30, 1964 (78 Stat. 188), fixed the beneficial ownership of the Colorado River Reservation in the Colorado River Indian Tribes of the Colorado River Reservation and authorized the Secretary of the Interior to approve leases of said lands for such uses and terms as are authorized by the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415, et seq.), including the same uses and terms as are permitted thereby on the Agua Caliente (Palm Springs), Dania, Navajo, and Southern Ute Reservations. Regulations in this part 162 govern leasing under the Act of August 9, 1955. Therefore, part 162 shall also govern the leasing of lands on the Colorado River Reservation: *Provided, however*, That application of this part 162 shall not extend to any lands lying west of the present course of the Colorado River and south of sec. 12 of T. 5 S., R. 23 E., San Bernardino base and meridian in California and shall not be construed to affect the resolution of any controversy over the location of the boundary of the Colorado River Reservation; *Provided further*, That any of the described lands in California shall be subject to the provisions of this part 162 when and if determined to be within the reservation.

[30 FR 14156, Nov. 10, 1965, as amended at 35 FR 18051, Nov. 25, 1970. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 162.19 Grazing units excepted.

Tribal or individually owned lands within range units established pursuant to part 166 of this chapter, general grazing regulations, shall not be leased and permits respecting such lands shall not be issued under this part.

§ 162.20 San Xavier and Salt River Pima-Maricopa Reservations.

(a) *Purpose and scope.* The Act of November 2, 1966 (80 Stat. 1112), provides statutory authority for long-term leasing on the San Xavier and Salt River Pima-Maricopa Reservations, Ariz., in addition to that contained in the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415). When leases are made under the 1955 Act on the San Xavier or Salt River Pima-Maricopa Reservations, the regulations in §§ 162.1 through 162.14 and in § 162.19 apply. The purpose of this § 162.20 is to provide regulations for implementation of the 1966 Act. The 1966 Act does not apply to

leases made for purposes that are subject to the laws governing mining leases on Indian lands.

(b) *Duration of leases.* Leases made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes may be made for terms of not to exceed 99 years. The terms of a grazing lease shall not exceed 10 years; the term of a farming lease that does not require the making of a substantial investment in the improvement of the land shall not exceed 10 years; and the term of a farming lease that requires the making of a substantial investment in the improvement of the land shall not exceed 40 years. No lease shall contain an option to renew which extends the total term beyond the maximum term permitted by this section.

(c) *Required covenant and enforcement thereof.* Every lease under the 1966 Act shall contain a covenant on the part of the lessee that he will not commit or permit on the leased land any act that causes waste or a nuisance or which creates a hazard to health of persons or to property wherever such persons or property may be.

(d) *Notification regarding leasing proposals.* If the Secretary determines that a proposed lease to be made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes will substantially affect the governmental interests of a municipality contiguous to the San Xavier Reservation or the Salt River Pima-Maricopa Reservation, as the case may be, he shall notify the appropriate authority of such municipality of the pendency of the proposed lease. The Secretary may, in his discretion, furnish such municipality with an outline of the major provisions of the lease which affect its governmental interests and shall consider any comments on the terms of the lease affecting the municipality or on the absence of such terms from the lease that the authorities may offer. The notice to the authorities of the municipality shall set forth a reasonable period, not to exceed 30 days, within which any such comments shall be submitted.

(e) *Applicability of other regulations.* The regulations of §§162.1 through 162.14 and in §162.19 shall apply to leases made under the 1966 Act except where such regulations are inconsistent with this §162.20.

(f) *Mission San Xavier del Bac.* Nothing in the 1966 Act authorizes development that would detract from the scenic, historic, and religious values of the Mission San Xavier del Bac owned by the Franciscan Order of Friars Minor and located on the San Xavier Reservation.

[33 FR 14641, Oct. 1, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982]

PART 163—GENERAL FORESTRY REGULATIONS

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AUTHORITY: 25 U.S.C. 2, 5, 9, 13, 406, 407, 413, 415, 466; and 3101–3120.

SOURCE: 60 FR 52260, Oct. 5, 1995, unless otherwise noted.

Subpart A—General Provisions

§ 163.1 Definitions.

Advance deposits means, in Timber Contract for the Sale of Estimated Volumes, contract-required deposits in advance of cutting which the purchaser furnishes to maintain an operating balance against which the value of timber to be cut will be charged.

Advance payments means, in Timber Contract for the Sale of Estimated Volumes, non-refundable partial payments of the estimated value of the timber to be cut. Payments are furnished within 30 days of contract approval and prior to cutting. Advance payments are normally 25 percent of the estimated value of the forest products on each allotment. Advance payments may be required for tribal land.

Alaska Native means native as defined in section 3(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1604).

ANCSA corporation means both profit and non-profit corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1604).

Approval means authorization by the Secretary, Area Director, Superintendent, tribe or individual Indian in accordance with appropriate delegations of authority.

Approving officer means the officer approving instruments of sale for forest products or his/her authorized representative.

Authorized representative means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority.

Authorized tribal representative means an individual or entity duly empowered to make decisions under a direct, clear, and specific delegation of authority from an Indian tribe.

Beneficial owner means an individual or entity who holds an ownership interest in Indian land.

Bid deposit means, in Timber Contract for the Sale of Estimated Volumes or in Timber Contract for the Sale of Predetermined Volumes, a deposit with bid furnished by prospective purchasers. At contract execution, the bid deposit of the successful bidder becomes a portion of the contract required advance deposit in estimated volume contracts or an installment payment in predetermined volume contracts.

Commercial forest land means forest land that is producing or capable of producing crops of marketable forest products and is administratively available for intensive management and sustained production.

Expenditure plan means a written agreement between an Indian tribe and the Secretary documenting tribal commitment to undertake specified forest land management activities within general time frames.

Forest or forest land means an ecosystem at least one acre in size, including timberland and woodland, which: Is characterized by a more or less dense and extensive tree cover; contains, or once contained, at least ten percent tree crown cover, and is not developed or planned for exclusive non-forest resource use.

Forest land management activities means all activities performed in the management of Indian forest land including:

(a) All aspects of program administration and executive direction such as:

(1) Development and maintenance of policy and operational procedures, program oversight, and evaluation;

(2) Securing of legal assistance and handling of legal matters;

(3) Budget, finance, and personnel management; and

(4) Development and maintenance of necessary data bases and program reports.

(b) All aspects of the development, preparation and revision of forest inventory and management plans, including aerial photography, mapping, field management inventories and re- inventories, inventory analysis, growth studies, allowable annual cut calculations, environmental assessment, and forest history, consistent with and reflective of tribal integrated resource management plans where such plans exist.

(c) Forest land development, including forestation, thinning, tree improvement activities, and the use of silvicultural treatments to restore or increase growth and yield to the full productive capacity of the forest environment.

(d) Protection against losses from wildfire, including acquisition and maintenance of fire fighting equipment and fire detection systems, construction of fire breaks, hazard reduction, prescribed burning, and the development of cooperative wildfire management agreements.

(e) Protection against insects and disease, including:

(1) All aspects of detection and evaluation;

(2) Preparation of project proposals containing project descriptions, environmental assessments and statements, and cost- benefit analyses necessary to secure funding;

(3) Field suppression operations and reporting.

(f) Assessment of damage caused by forest trespass, infestation or fire, including field examination and survey, damage appraisal, investigation assistance and report, demand letter, and testimony preparation.

(g) All aspects of the preparation, administration, and supervision of timber sale contracts, paid and free use permits, and other Indian forest product harvest sale documents, including;

(1) Cruising, product marketing, silvicultural prescription, appraisal and harvest supervision;

(2) Forest product marketing assistance, including evaluation of marketing and development opportunities related to Indian forest products and consultation and advice to tribes, tribal and Indian enterprises on maximization of return on forest products;

(3) Archeological, historical, environmental and other land management reviews, clearances, and analyses;

(4) Advertising, executing, and supervising contracts;

(5) Marking and scaling of timber; and

(6) Collecting, recording and distributing receipts from sales.

(h) Provision of financial assistance for the education of Indians and Alaska Natives enrolled in accredited programs of postsecondary and postgraduate forestry and forestry-related fields of study, including the provision of scholarships, internships, relocation assistance, and other forms of assistance to cover educational expenses.

(i) Participation in the development and implementation of tribal integrated resource management plans, including activities to coordinate current and future multiple uses of Indian forest lands.

(j) Improvement and maintenance of extended season primary and secondary Indian forest land road systems.

(k) Research activities to improve the basis for determining appropriate management measures to apply to Indian forest land.

Forest management deduction means a percentage of the gross proceeds from the sales of forest products harvested from Indian land which is collected by the Secretary pursuant to 25 U.S.C. 413 to cover in whole or in part the cost of managing and protecting such Indian forest lands.

Forest management plan means the principal document, approved by the Secretary, reflecting and consistent

with an integrated resource management plan, which provides for the regulation of the detailed, multiple-use operation of Indian forest land by methods ensuring that such lands remain in a continuously productive state while meeting the objectives of the tribe and which shall include: Standards setting forth the funding and staffing requirements necessary to carry out each management plan, with a report of current forestry funding and staffing levels; and standards providing quantitative criteria to evaluate performance against the objectives set forth in the plan.

Forest products means marketable products extracted from Indian forests, such as: Timber; timber products, including lumber, lath, crating, ties, bolts, logs, pulpwood, fuelwood, posts, poles, and split products; bark; Christmas trees, stays, branches, firewood, berries, mosses, pinyon nuts, roots, acorns, syrups, wild rice, mushrooms, and herbs; other marketable material; and gravel which is extracted from, and utilized on, Indian forest land.

Forestry-related field or *forestry-related curriculum* means a renewable natural resource management field necessary to manage Indian forest land and other professionally recognized fields as approved by the education committee established pursuant to § 163.40(a)(1).

Forest resources means all the benefits derived from Indian forest land, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest land.

Forester intern means an Indian or Alaska Native who: Is employed as a forestry or forestry-related technician with the Bureau of Indian Affairs, an Indian tribe, or tribal forest-related enterprise; is acquiring necessary academic qualifications to become a forester or a professional trained in forestry-related fields; and is appointed to one of the Forester Intern positions established pursuant to § 163.40(b).

Indian means a member of an Indian tribe.

Indian enterprise means an enterprise which is designated as such by the Secretary or tribe.

Indian forest land means Indian land, including commercial, non-commercial, productive and non-productive timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless of whether a formal inspection and land classification action has been taken.

Indian land means land title which is held by: The United States in trust for an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally-recognized Indian tribe, or an Indian tribe; or by an Indian, an individual of Indian or Alaska Native ancestry who is not a member of a federally recognized tribe, or an Indian tribe subject to a restriction by the United States against alienation.

Indian tribe or *tribe* means any Indian tribe, band, nation, rancheria, Pueblo or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and shall mean, where appropriate, the recognized tribal government of such tribe's reservation.

Installment payments means, in Timber Contract for the Sale of Predetermined Volumes, scheduled partial payments of the total contract value based on purchaser bid. Payments made are normally not refundable.

Integrated resource management plan means a document, approved by an Indian tribe and the Secretary, which provides coordination for the comprehensive management of the natural resources of such tribe's reservation.

Noncommercial forest land means forest land that is available for extensive management, but is incapable of producing sustainable forest products within the general rotation period. Such land may be economically harvested, but the site quality does not warrant significant investment to enhance future crops.

Productive forest land means forest land producing or capable of producing marketable forest products that is unavailable for harvest because of administrative restrictions or because access is not practical.

Reservation means an Indian reservation established pursuant to treaties,

Acts of Congress, or Executive Orders and public domain Indian allotments, Alaska Native allotments, rancherias, and former Indian reservations in Oklahoma.

Secretary means the Secretary of the Interior or his or her authorized representative.

Stumpage rate means the stumpage value per unit of measure for a forest product.

Stumpage value means the value of a forest product prior to extraction from Indian forest land.

Sustained yield means the yield of forest products that a forest can produce continuously at a given intensity of management.

Timberland means forest land stocked, or capable of being stocked, with tree species that are regionally utilized for lumber, pulpwood, poles or veneer products.

Trespass means the removal of forest products from, or damaging forest products on, Indian forest land, except when authorized by law and applicable federal or tribal regulations. Trespass can include any damage to forest resources on Indian forest land resulting from activities under contracts or permits or from fire.

Tribal forest enterprise means an Indian enterprise that is initiated and organized by a reservation's recognized tribal government.

Unproductive forest land means forest land that is not producing or capable of producing marketable forest products and is also unavailable for harvest because of administrative restrictions or because access is not practical.

Woodland means forest land not included within the timberland classification, stocked, or capable of being stocked, with tree species of such form and size to produce forest products that are generally marketable within the region for products other than lumber, pulpwood, or veneer.

§163.2 Information collection.

The information collection requirements contained in 25 CFR part 163 do not require the approval of the Office of Management and Budget under 44 U.S.C. 3504(h) et seq.

§163.3 Scope and objectives.

(a) The regulations in this part are applicable to all Indian forest land except as this part may be superseded by legislation.

(b) Indian forest land management activities undertaken by the Secretary shall be designed to achieve the following objectives:

(1) The development, maintenance and enhancement of Indian forest land in a perpetually productive state in accordance with the principles of sustained yield and with the standards and objectives set forth in forest management plans by providing effective management and protection through the application of sound silvicultural and economic principles to the harvesting of forest products, forestation, timber stand improvement and other forestry practices;

(2) The regulation of Indian forest land through the development and implementation, with the full and active consultation and participation of the appropriate Indian tribe, of forest management plans which are supported by written tribal objectives;

(3) The regulation of Indian forest land in a manner that will ensure the use of good method and order in harvesting so as to make possible, on a sustained yield basis, continuous productivity and a perpetual forest business;

(4) The development of Indian forest land and associated value-added industries by Indians and Indian tribes to promote self-sustaining communities, so that Indians may receive from their Indian forest land not only stumpage value, but also the benefit of all the labor and profit that such Indian forest land is capable of yielding;

(5) The retention of Indian forest land in its natural state when an Indian tribe determines that the recreational, cultural, aesthetic, or traditional values of the Indian forest land represents the highest and best use of the land;

(6) The management and protection of forest resources to retain the beneficial effects to Indian forest land of regulating water run-off and minimizing soil erosion; and

(7) The maintenance and improvement of timber productivity, grazing,

wildlife, fisheries, recreation, aesthetic, cultural and other traditional values.

§ 163.4 Secretarial recognition of tribal laws.

Subject to the Secretary's trust responsibilities, and unless otherwise prohibited by Federal statutory law, the Secretary shall comply with tribal laws pertaining to Indian forest land, including laws regulating the environment or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian forest land. Such cooperation does not constitute a waiver of United States sovereign immunity and shall include:

(a) Assistance in the enforcement of such laws;

(b) Provision of notice of such laws to persons or entities undertaking activities on Indian forest land; and

(c) Upon the request of an Indian tribe, the appearance in tribal forums.

Subpart B—Forest Management and Operations

§ 163.10 Management of Indian forest land.

(a) The Secretary shall undertake forest land management activities on Indian forest land, either directly or through contracts, cooperative agreements, or grants under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended).

(b) Indian forest land management activities undertaken by the Secretary shall be designed to achieve objectives enumerated in § 163.3 of this part.

§ 163.11 Forest management planning and sustained yield management.

(a) To further the objectives identified in § 163.3 of this part, an appropriate forest management plan shall be prepared and revised as needed for all Indian forest lands. Such documents shall contain a statement describing the manner in which the policies of the tribe and the Secretary will be applied, with a definite plan of silvicultural management, analysis of the short term and long term effects of the plan, and a program of action, including a harvest schedule, for a specified period in the future. Forest management plans shall be based on the principle of sustained yield management and objectives established by the tribe and will require approval of the Secretary.

(b) Forest management planning for Indian forest land shall be carried out through participation in the development and implementation of integrated resource management plans which provide coordination for the comprehensive management of all natural resources on Indian land. If the integrated resource management planning process has not been initiated, or is not ongoing or completed, a stand-alone forest management plan will be prepared.

(c) The harvest of forest products from Indian forest land will be accomplished under the principles of sustained yield management and will not be authorized until practical methods of harvest based on sound economic and silvicultural and other forest management principles have been prescribed. Harvest schedules will be prepared for a specified period of time and updated annually. Such schedules shall support the objectives of the beneficial land owners and the Secretary and shall be directed toward achieving an approximate balance between net growth and harvest at the earliest practical time.

§ 163.12 Harvesting restrictions.

(a) Harvesting timber on commercial forest land will not be permitted unless provisions for natural and/or artificial reforestation of acceptable tree species is included in harvest plans.

(b) Clearing of large contiguous areas will be permitted only on land that, when cleared, will be devoted to a more beneficial use than growing timber crops. This restriction shall not prohibit clearcutting when it is silviculturally appropriate, based on ecological principles, to harvest a particular stand of timber by such method and it otherwise conforms with objectives in § 163.3 of this part.

§ 163.13 Indian tribal forest enterprise operations.

Indian tribal forest enterprises may be initiated and organized with consent of the authorized tribal representatives. Such enterprises may contract

for the purchase of non-Indian owned forest products. Subject to approval by the Secretary the following actions may be taken:

(a) Authorized tribal enterprises may enter into formal agreements with tribal representatives for the use of tribal forest products, and with individual beneficial Indian owners for their forest products;

(b) Authorized officials of tribal enterprises, operating under approved agreements for the use of Indian-owned forest products pursuant to this section, may sell the forest products produced according to generally accepted trade practices;

(c) With the consent of the beneficial Indian owners, such enterprises may, without advertisement, contract for the purchase of forest products on Indian land at stumpage rates authorized by the Secretary;

(d) Determination of and payment for stumpage and/or products utilized by such enterprises will be authorized in accordance with §163.22. However, the Secretary may issue special instructions for payment by methods other than those in §163.22 of this part; and

(e) Performance bonds may or may not be required in connection with operations on Indian land by such enterprises as determined by the Secretary.

§163.14 Sale of forest products.

(a) Consistent with the economic objectives of the tribe and with the consent of the Secretary and authorized by tribal resolution or resolution of recognized tribal government, open market sales of Indian forest products may be authorized. Such sales require consent of the authorized representatives of the tribe for the sale of tribal forest products, and the owners of a majority Indian interest on individually owned lands. Open market sales of forest products from Indian land located off reservations will be permitted with the consent of the Secretary and majority Indian interest of the beneficial Indian owner(s).

(b) On individually owned Indian forest land not formally designated for retention in its natural state, the Secretary may, after consultation, sell the forest products without the consent of the owner(s) when in his or her judgment such action is necessary to prevent loss of value resulting from fire, insects, diseases, windthrow or other catastrophes.

(c) Unless otherwise authorized by the Secretary, each sale of forest products having an estimated stumpage value exceeding $15,000 will not be approved until:

(1) An examination of the forest products to be sold has been made by a forest officer; and

(2) A report setting forth all pertinent information has been submitted to the approving officer as provided in §163.20 of this part.

(d) With the approval of the Secretary, authorized beneficial Indian owners who have been duly apprised as to the value of the forest products to be sold, may sell or transfer forest products for less than the appraised value.

(e) Except as provided in §163.14(d) of this part, in all such sales, the forest products shall be appraised and sold at stumpage rates not less than those established by the Secretary.

§163.15 Advertisement of sales.

Except as provided in §§163.13, 163.14, 163.16, and 163.26 of this part, sales of forest products shall be made only after advertising.

(a) The advertisement shall be approved by the officer who will approve the instrument of sale. Advertised sales shall be made under sealed bids, or at public auction, or under a combination thereof. The advertisement may limit sales of Indian forest products to Indian forest enterprises, members of the tribe, or may grant to Indian forest enterprises and/or members of the tribe who submitted bids the right to meet the higher bid of a nonmember. If the estimated stumpage value of the forest products offered does not exceed $15,000, the advertisement may be made by posters and circular letters. If the estimated stumpage value exceeds $15,000, the advertisement shall also be made in at least one edition of a newspaper of general circulation in the locality where the forest products are situated. If the estimated stumpage value does not exceed $50,000, the advertisement shall be made for not less than 15 days; if the

estimated stumpage value exceeds $50,000 but not $250,000, for not less than 30 days; and if the estimated stumpage value exceeds $250,000, for not less than 60 days.

(b) The approving officer may reduce the advertising period because of emergencies such as fire, insect attack, blowdown, limitation of time, or when there would be no practical advantage in advertising for the prescribed period.

(c) If no instrument of sale is executed after such advertisement, the approving officer may, within one year from the last day on which bids were to be received as defined in the advertisement, permit the sale of such forest products. The sale will be made upon the terms and conditions in the advertisement and at not less than the advertised value or the appraised value at the time of sale, whichever is greater.

§ 163.16 Forest product sales without advertisement.

(a) Sales of forest products may be made without advertisement to Indians or non-Indians with the consent of the authorized tribal representatives for tribal forest products or with the consent of the beneficial owners of a majority Indian interest of individually owned Indian land, and the approval of the Secretary when:

(1) Forest products are to be cut in conjunction with the granting of a right-of-way;

(2) Granting an authorized occupancy;

(3) Tribal forest products are to be purchased by an Indian tribal forest enterprise;

(4) It is impractical to secure competition by formal advertising procedures;

(5) It must be cut to protect the forest from injury; or

(6) Otherwise specifically authorized by law.

(b) The approving officer shall establish a documented record of each negotiated transaction. This will include:

(1) A written determination and finding that the transaction is a type allowing use of negotiation procedures;

(2) The extent of solicitation and competition, or a statement of the facts upon which a finding of impracticability of securing competition is based; and

(3) A statement of the factors on which the award is based, including a determination as to the reasonability of the price accepted.

§ 163.17 Deposit with bid.

(a) A deposit shall be made with each proposal for the purchase of Indian forest products. Such deposits shall be at least:

(1) Ten (10) percent if the appraised stumpage value is less than $100,000 and in any event not less than $1,000 or full value whichever is less;

(2) Five (5) percent if the appraised stumpage value is $100,000 to $250,000 but in any event not less than $10,000; and

(3) Three (3) percent if the appraised stumpage value exceeds $250,000 but in any event not less than $12,500.

(b) Deposits shall be in the form of either a certified check, cashier's check, bank draft, postal money order, or irrevocable letter-of-credit, drawn payable as specified in the advertisement, or in cash.

(c) The deposit of the apparent high bidder, and of others who submit a written request to have their bids considered for acceptance will be retained pending acceptance or rejection of the bids. All other deposits will be returned following the opening and posting of bids.

(d) The deposit of the successful bidder will be forfeited and distributed as damages to the beneficial owners if the bidder does not:

(1) Furnish the performance bond required by § 163.21 of this part within the time stipulated in the advertisement for sale of forest products;

(2) Execute the contract; or

(3) Perform the contract.

(e) Forfeiture of a deposit does not limit or waive any further claims for damages available under applicable law or terms of the contract.

(f) In the event of an administrative appeal under 25 CFR part 2, the Secretary may hold such bid deposits in an escrow account pending resolution of the appeal.

§163.18 Acceptance and rejection of bids.

(a) The high bid received in accordance with any advertisement issued under authority of this part shall be accepted, except that the approving officer, having set forth the reason(s) in writing, shall have the right to reject the high bid if:

(1) The high bidder is considered unqualified to fulfill the contractual requirement of the advertisement; or

(2) There are reasonable grounds to consider it in the interest of the Indians to reject the high bid.

(b) If the high bid is rejected, the approving officer may authorize:

(1) Rejection of all bids; or

(2) Acceptance of the offer of another bidder who, at bid opening, makes written request that their bid and bid deposit be held pending a bid acceptance.

(c) The officer authorized to accept the bid shall have the discretion to waive minor technical defects in advertisements and proposals, such as typographical errors and misplaced entries.

§163.19 Contracts for the sale of forest products.

(a) In sales of forest products with an appraised stumpage value exceeding $15,000, the contract forms approved by the Secretary must be used unless a special form for a particular sale or class of sales is approved by the Secretary.

(b) Unless otherwise directed, the contracts for forest products from individually-owned Indian land will be paid by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent. Upon the request of the tribe, the contracts for tribal forest products may require that the proceeds be paid promptly and directly into a bank depository account designated by such tribe, or by remittance drawn to the Bureau of Indian Affairs and transmitted to the Superintendent.

(c) By mutual agreement of the parties to a contract, contracts may be extended, modified, or assigned subject to approval by the approving officer, and may be terminated by the approving officer upon completion or by mutual agreement.

§163.20 Execution and approval of contracts.

(a) All contracts for the sale of tribal forest products shall be executed by the authorized tribal representative(s). There shall be included with the contract an affidavit executed by the authorized tribal representative(s) setting forth the resolution or other authority of the governing body of the tribe. Contracts must be approved by the Secretary to be valid.

(b) Contracts for the sale of individually owned forest products shall be executed by the beneficial Indian owner(s) or the Secretary acting pursuant to a power of attorney from the beneficial Indian owner(s). Contracts must be approved by the Secretary to be valid.

(1) The Secretary may, after consultation with any legally appointed guardian, execute contracts on behalf of minors and beneficial Indian owners who are non compos mentis.

(2) The Secretary may execute contracts for a decedent's estate where ownership has not been determined or for those persons who cannot be located after a reasonable and diligent search and the giving of notice by publication.

(3) Upon the request of the owner of an undivided but unrestricted interest in land in which there are trust or restricted Indian interests, the Secretary may include such unrestricted interest in a sale of the trust or restricted interests in the timber, pursuant to this part, and perform any functions required of him/her by the contract of sale for both the restricted and the unrestricted interests, including the collection and disbursement of payments for timber and the forest management deductions from such payments.

(4) When consent of only a majority interest has been obtained, the Secretary may execute the sale on behalf of all owners to fulfill responsibilities to the beneficiaries of the trust. In such event, the contract file must contain evidence of the effort to obtain consent of all owners. When an individual cannot be located, the Secretary, after a reasonable and diligent search and the giving of notice by publication, may sign a power of attorney consenting to the sale for particular interests.

For Indian forest land containing undivided restricted and unrestricted interests, only the restricted interests are considered in determining if a majority interest has been obtained.

§ 163.21 Bonds required.

(a) Performance bonds will be required in connection with all sales of forest products, except they may or may not be required, as determined by the approving officer, in connection with the use of forest products by Indian tribal forest enterprises pursuant to this part in § 163.13 or in timber cutting permits issued pursuant to § 163.26 of this part.

(1) In sales in which the estimated stumpage value, calculated at the appraised stumpage rates, does not exceed $15,000, the bond shall be at least 20 percent of the estimated stumpage value.

(2) In sales in which the estimated stumpage value exceeds $15,000 but is not over $150,000, the bond shall be at least 15 percent of the estimated stumpage value but not less than $3,000.

(3) In sales in which the estimated stumpage value exceeds $150,000, but is not over $350,000, the bond shall be at least 10 percent of the estimated stumpage value but not less than $22,500.

(4) In sales in which the estimated stumpage value exceeds $350,000, the bond shall be at least 5 percent of the estimated stumpage value but not less than $35,000.

(b) Bonds shall be in a form acceptable to the approving officer and may include:

(1) A corporate surety bond by an acceptable surety company;

(2) A cash bond designating the approving officer to act as trustee under terms of an appropriate trust;

(3) Negotiable U.S. Government securities supported by an appropriate trust instrument; or

(4) An irrevocable letter of credit.

§ 163.22 Payment for forest products.

(a) The basis of volume determination for forest products sold shall be the Scribner Decimal C log rules, cubic volume, lineal measurement, piece count, weight, or such other form of measurement as the Secretary may authorize for use. With the exception of Indian tribal forest enterprises pursuant to § 163.13 of this part, payment for forest products will be required in advance of cutting for timber, or removal for other forest products.

(b) Upon the request of an Indian tribe, the Secretary may provide that the purchaser of the forest products of such tribe, which are harvested under a timber sale contract, permit, or other harvest sale document to make advanced deposits, or direct payments of the gross proceeds of such forest products, less any amounts segregated as forest management deductions pursuant to § 163.25 of this part, into accounts designated by such Indian tribe. Such accounts may be in one or more of the following formats:

(1) Escrow accounts at a tribally designated financial institution for receiving deposits with bids and advance deposits from which direct disbursements for timber harvested shall be made to tribes and forest management deductions accounts; or

(2) Tribal depository accounts for receiving advance payments, installment payments, payments from Indian tribal forest enterprises, and/or disbursements from advance deposit accounts or escrow accounts.

(c) The format must allow the Secretary to maintain trust responsibility through written verification that all required deposits, payments, and disbursements have been made.

(d) Terms and conditions for payment of forest products under lump sum (predetermined volume) sales shall be specified in forest product contract documents.

§ 163.23 Advance payment for timber products.

(a) Unless otherwise authorized by the Secretary, and except in the case of lump sum (predetermined volume) sales, contracts for the sale of timber from allotted, trust or restricted Indian forest land shall provide for an advance payment of up to 25 percent of the stumpage value, calculated at the bid price, within 30 days from the date of approval and before cutting begins. Additional advance payments may be

specified in contracts. However, no advance payment will be required that would make the sum of such payment and of advance deposits and advance payments previously applied against timber cut from each ownership in a sale exceed 50 percent of the bid stumpage value. Advance payments shall be credited against the timber of each ownership in the sale as the timber is cut and scaled at stumpage rates governing at the time of scaling. Advance payments are not refundable.

(b) Advance payments may be required on tribal land. When required, advance payments will operate the same as provided for in §163.23(a) of this part.

§163.24 Duration of timber contracts.

After the effective date of a forest product contract, unless otherwise authorized by the Secretary, the maximum period which shall be allowed for harvesting the estimated volume of timber purchased, shall be five years.

§163.25 Forest management deductions.

(a) Pursuant to the provisions of 25 U.S.C. 413 and 25 U.S.C. 3105, a forest management deduction shall be withheld from the gross proceeds of sales of forest products harvested from Indian forest land as described in this section.

(b) Gross proceeds shall mean the value in money or money's worth of consideration furnished by the purchaser of forest products purchased under a contract, permit, or other document for the sale of forest products.

(c) Forest management deductions shall not be withheld where the total consideration furnished under a contract, permit or other document for the sale of forest products is less than $5,001.

(d) Except as provided in §163.25(e) of this part, the amount of the forest management deduction shall not exceed the lesser amount of ten percent (10%) of the gross proceeds or, the actual percentage in effect on November 28, 1990.

(e) The Secretary may increase the forest management deduction percentage for Indian forest land upon receipt of a written request from a tribe supported by a resolution executed by the authorized tribal representatives. At the request of the authorized tribal representatives and at the discretion of the Secretary the forest management deduction percentage may be decreased to not less than one percent (1%) or the requirement for collection may be waived.

(f) Forest management deductions are to be utilized to perform forest land management activities in accordance with an approved expenditure plan. Expenditure plans shall describe the forest land management activities anticipated to be undertaken, establish a time period for their completion, summarize anticipated obligations and expenditures, and specify the method through which funds are to be transferred or credited to tribal accounts from special deposit accounts established to hold amounts withheld as forest management deductions. Any forest management deductions that have not been incorporated into an approved expenditure plan by the end of the fiscal year following the fiscal year in which the deductions are withheld, shall be collected into the general funds of the United States Treasury pursuant to 25 U.S.C. 413.

(1) For Indian forest lands located on an Indian reservation, a written expenditure plan for the use of forest management deductions shall be prepared annually and approved by the authorized tribal representative(s) and the Secretary. The approval of the expenditure plan by the authorized tribal representatives constitutes allocation of tribal funds for Indian forest land management activities. Approval of the expenditure plan by the Secretary shall constitute authority for crediting of forest management deductions to tribal account(s). The full amount of any deduction collected by the Secretary plus any income or interest earned thereon shall be available for expenditure according to the approved expenditure plan for the performance of forest land management activities on the reservation from which the forest management deduction is collected.

(2) Forest management deductions shall be handled in the same manner as described under §163.25(f)(1) of this part if the expenditure plan approved by an Indian tribe and the Secretary provides

for the conduct of forest land management activities on Indian forest lands located outside the boundaries of an Indian reservation.

(3) For public domain and Alaska Native allotments held in trust for Indians by the United States, forest management deductions may be utilized to perform forest land management activities on such lands in accordance with an expenditure plan approved by the Secretary.

(g) Forest management deductions withheld pursuant to this section shall not be available to cover the costs that are paid from funds appropriated for fire suppression or pest control or otherwise offset federal appropriations for meeting the Federal trust responsibility for management of Indian forest land.

(h) Within 120 days after the close of the tribal fiscal year, tribes shall submit to the Secretary a written report detailing the actual expenditure of forest management deductions during the past fiscal year. The Secretary shall have the right to inspect accounts, books, or other tribal records supporting the report.

(i) Forest management deductions incorporated into an expenditure plan approved by the Secretary shall remain available until expended.

(j) As provided in § 163.25(f) of this part, only forest management deductions that have not been incorporated into an approved expenditure plan may be deposited to a U.S. Treasury miscellaneous receipt account. No amount collected as forest management deductions shall be credited to any Federal appropriation. No other forest management deductions or fees derived from Indian forest land shall be collected to be covered into the general funds of the United States Treasury.

§ 163.26 Forest product harvesting permits.

(a) Except as provided in §§ 163.13 and 163.27 of this part, removal of forest products that are not under formal contract, pursuant to § 163.19, shall be under forest product harvesting permit forms approved by the Secretary. Permits will be issued only with the written consent of the beneficial Indian owner(s) or the Secretary, for harvest of forest products from Indian forest land, as authorized in § 163.20 of this part. To be valid, permits must be approved by the Secretary. Minimum stumpage rates at which forest products may be sold will be set at the time consent to issue the permit is obtained. Payment and bonding requirements will be stipulated in the permit document as appropriate.

(b) Free use harvesting permits issued shall specify species and types of forest products to be removed. It may be stipulated that forest products removed under this authority cannot be sold or exchanged for other goods or services. The estimated value which may be harvested in a fiscal year by any individual under this authority shall not exceed $5,000. For the purpose of issuance of free use permits, individual shall mean an individual Indian or any organized group of Indians.

(c) Paid permits subject to forest management deductions, as provided in § 163.25 of this part, may be issued. Unless otherwise authorized by the Secretary, the stumpage value which may be harvested under paid permits in a fiscal year by any individual under this authority shall not exceed $25,000. For the purpose of issuance of paid permits, individual shall mean an individual or any operating entity comprised of more than one individual.

(d) A Special Allotment Timber Harvest Permit may be issued to an Indian having sole beneficial interest in an allotment to harvest and sell designated forest products from his or her allotment. The special permit shall include provision for payment by the Indian of forest management deductions pursuant to § 163.25 of this part. Unless waived by the Secretary, the permit shall also require the Indian to make a bond deposit with the Secretary as required by § 163.21. Such bonds will be returned to the Indian upon satisfactory completion of the permit or will be used by the Secretary in his or her discretion for planting or other work to offset damage to the land or the timber caused by failure to comply with the provisions of the permit. As a condition to granting a special permit under authority of this paragraph, the Indian shall be required to provide evidence acceptable to the Secretary that

he or she has arranged a bona fide sale of the forest products, on terms that will protect the Indian's interests.

§163.27 Free-use harvesting without permits.

With the consent of the beneficial Indian owners and the Secretary, Indians may harvest designated types of forest products from Indian forest land without a permit or contract, and without charge. Forest products harvested under this authority shall be for the Indian's personal use, and shall not be sold or exchanged for other goods or services.

§163.28 Fire management measures.

(a) The Secretary is authorized to maintain facilities and staff, hire temporary labor, rent fire fighting equipment, purchase tools and supplies, and pay for their transportation as needed, to maintain an adequate level of readiness to meet normal wildfire protection needs and extinguish forest or range fires on Indian land. No expenses for fighting a fire outside Indian lands may be incurred unless the fire threatens Indian land or unless the expenses are incurred pursuant to an approved cooperative agreement with another protection agency. The rates of pay for fire fighters and for equipment rental shall be the rates for fire fighting services that are currently in use by public and private wildfire protection agencies adjacent to Indian reservations on which a fire occurs, unless there are in effect at the time different rates that have been approved by the Secretary. The Secretary may also enter into reciprocal agreements with any fire organization maintaining protection facilities in the vicinity of Indian reservations or other Indian land for mutual aid in wildfire protection. This section does not apply to the rendering of emergency aid, or agreements for mutual aid in fire protection pursuant to the Act of May 27, 1955 (69 Stat. 66).

(b) The Secretary is authorized to conduct a wildfire prevention program to reduce the number of person-caused fires and prevent damage to natural resources on Indian land.

(c) The Secretary is authorized to expend funds for emergency rehabilitation measures needed to stabilize soil and watershed on Indian land damaged by wildfire.

(d) Upon consultation with the beneficial Indian owners, the Secretary may use fire as a management tool on Indian land to achieve land and/or resource management objectives.

§163.29 Trespass.

(a) Trespassers will be liable for civil penalties and damages to the enforcement agency and the beneficial Indian owners, and will be subject to prosecution for acts of trespass.

(1) *Cases in Tribal Court.* For trespass actions brought in tribal court pursuant to these regulations, the measure of damages, civil penalties, remedies and procedures will be as set forth in this §163.29 of this part. All other aspects of a tribal trespass prosecution brought under these regulations will be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, unless otherwise prescribed under federal law. Absent applicable tribal or federal law, the measure of damages shall be that prescribed by the law of the state in which the trespass was committed.

(2) *Cases in Federal Court.* For trespass actions brought in Federal court pursuant to these regulations, the measure of damages, civil penalties, remedies and procedures will be as set forth in this §163.29. In the absence of applicable federal law, the measure shall be that prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, or in the absence of tribal law, the law of the state in which it was committed.

(3) Civil penalties for trespass include, but are not limited to:

(i) Treble damages, whenever any person, without lawful authority injures, severs, or carries off from a reservation any forest product as defined in §163.1 of this part. Proof of Indian ownership of the premises and commission of the acts by the trespasser are prima facie evidence sufficient to support liability for treble damages, with no requirement to show willfulness or intent. Treble damages shall be based

upon the highest stumpage value obtainable from the raw materials involved in the trespass.

(ii) Payment of costs associated with damage to Indian forest land includes, but is not limited to, rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity, and damage to other forest resources.

(iii) Payment of all reasonable costs associated with the enforcement of these trespass regulations beginning with detection and including all processes through the prosecution and collection of damages, including but not limited to field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees.

(iv) Interest calculated at the statutory rate prescribed by the law of the tribe in whose reservation or within whose jurisdiction the trespass was committed, or in the absence of tribal law in the amount prescribed by federal law. Where tribal law or federal law does not supply a statutory interest rate, the rate of interest shall be statutory rate upon judgments as prescribed by the law of the state in which the trespass was committed. Interest shall be based on treble the highest stumpage value obtainable from the raw materials involved in the trespass, and calculated from the date of the trespass until payment is rendered.

(b) Any cash or other proceeds realized from forfeiture of equipment or other goods or from forest products damaged or taken in the trespass shall be applied to satisfy civil penalties and other damages identified under § 163.29(a) of this part. After disposition of real and personal property to pay civil penalties and damages resulting from trespass, any residual funds shall be returned to the trespasser. In the event that collection and forfeiture actions taken against the trespasser result in less than full recovery, civil penalties shall be distributed as follows:

(1) Collection of damages up to the highest stumpage value of the trespass products shall be distributed pro rata between the Indian beneficial owners and any costs and expenses needed to restore the trespass land; or

(2) Collections exceeding the highest stumpage value of the trespass product, but less than full recovery, shall be proportionally distributed pro rata between the Indian beneficial owners, the law enforcement agency, and the cost to restore the trespass land. Forest management deductions shall not be withheld where less than the highest stumpage value of the unprocessed forest products taken in trespass has been recovered.

(c) Indian beneficial owners who trespass, or who are involved in trespass upon their own land, or undivided land in which such owners have a partial interest, shall not receive their beneficial share of any civil penalties and damages collected in consequence of the trespass. Any civil penalties and damages defaulted in consequence of this provision instead shall be distributed first toward restoration of the land subject of the trespass and second toward costs of the enforcement agency in consequence of the trespass, with any remainder to the forest management deduction account of the reservation in which the trespass took place.

(d) Civil penalties and other damages collected under these regulations, except for penalties and damages provided for in §§ 163.29(a)(3) (ii) and (iii) of this part, shall be treated as proceeds from the sale of forest products from the Indian forest land upon which the trespass occurred.

(e) When a federal official or authorized tribal representative pursuant to § 163.29(j) of this part has reason to believe that Indian forest products are involved in trespass, such individual may seize and take possession of the forest products involved in the trespass if the products are located on reservation. When forest products are seized, the person seizing the products must at the time of the seizure issue a Notice of Seizure to the possessor or claimant of the forest products. The Notice of Seizure shall indicate the date of the seizure, a description of the forest products seized, the estimated value of forest products seized, an indication of whether the forest products are perishable, and the name and authority of the person seizing the forest products. Where the official initiates seizure

under these regulations only, the Notice of Seizure shall further include the statement that any challenge or objection to the seizure shall be exclusively through administrative appeal pursuant to part 2 of title 25, and shall provide the name and the address of the official with whom the appeal may be filed. Alternately, an official may exercise concurrent tribal seizure authority under these regulations using applicable tribal law. In such case, the Notice of Seizure shall identify the tribal law under which the seizure may be challenged, if any. A copy of a Notice of Seizure shall be given to the possessor or claimant at the time of the seizure. If the claimant or possessor is unknown or unavailable, Notice of Seizure shall be posted on the trespass property, and a copy of the Notice shall be kept with any incident report generated by the official seizing the forest products. If the property seized is perishable and will lose substantial value if not sold or otherwise disposed of, the representative of the Secretary, or authorized tribal representative where deferral has been requested, may cause the forest products to be sold. Such sale action shall not be stayed by the filing of an administrative appeal nor by a challenge of the seizure action through a tribal forum. All proceeds from the sale of the forest products shall be placed into an escrow account and held until adjudication or other resolution of the underlying trespass. If it is found that the forest products seized were involved in a trespass, the proceeds shall be applied to the amount of civil penalties and damages awarded. If it is found that a trespass has not occurred or the proceeds are in excess of the amount of the judgment awarded, the proceeds or excess proceeds shall be returned to the possessor or claimant.

(f) When there is reason to believe that Indian forest products are involved in trespass and that such products have been removed to land not under federal or tribal government supervision, the federal official or authorized tribal representative pursuant to § 163.29(k) of this part responsible for the trespass shall immediately provide the following notice to the owner of the land or the party in possession of the trespass products:

(1) That such products could be Indian trust property involved in a trespass; and

(2) That removal or disposition of the forest products may result in criminal and/or civil action by the United States or tribe.

(g) A representative of the Secretary or authorized tribal representative pursuant to § 163.29(j) of this part will promptly determine if a trespass has occurred. The appropriate representative will issue an official Notice of Trespass to the alleged trespasser and, if necessary, the possessor or potential buyer of any trespass products. The Notice is intended to inform the trespasser, buyer, or the processor:

(1) That a determination has been made that a trespass has occurred;

(2) The basis for the determination;

(3) An assessment of the damages, penalties and costs;

(4) Of the seizure of forest products, if applicable; and

(5) That disposition or removal of Indian forest products taken in the trespass may result in civil and/or criminal action by the United States or the tribe.

(h) The Secretary may accept payment of damages in the settlement of civil trespass cases. In the absence of a court order, the Secretary will determine the procedure and approve acceptance of any settlements negotiated by a tribe exercising its concurrent jurisdiction pursuant to § 163.29(j) of this part.

(i) The Secretary may delegate by written agreement or contract, responsibility for detection and investigation of forest trespass.

(j) Indian tribes that adopt the regulations set forth in this section, conformed as necessary to tribal law, shall have concurrent civil jurisdiction to enforce 25 U.S.C. 3106 and this section against any person.

(1) The Secretary shall acknowledge said concurrent civil jurisdiction over trespass, upon:

(i) Receipt of a formal tribal resolution documenting the tribe's adoption of this section; and

(ii) Notification of the ability of the tribal court system to properly adjudicate forest trespass cases, including a

statement that the tribal court will enforce the Indian Civil Rights Act or a tribal civil rights law that contains provisions for due process and equal protection that are similar to or stronger than those contained in the Indian Civil Rights Act.

(2) Where an Indian tribe has acquired concurrent civil jurisdiction over trespass cases as set forth in § 163.29(j)(1) of this part, the Secretary and tribe's authorized representatives will be jointly responsible to coordinate prosecution of trespass actions. The Secretary shall, upon timely request of the tribe, defer prosecution of forest trespasses to the tribe. Where said deferral is not requested, the designated Bureau of Indian Affairs forestry trespass official shall coordinate with the authorized forest trespass official of each tribe the exercise of concurrent tribal and Federal trespass jurisdiction as to each trespass. Such officials shall review each case, determine in which forums to recommend bringing an action, and promptly provide their recommendation to the Federal officials responsible for initiating and prosecuting forest trespass cases. Where an Indian tribe has acquired concurrent civil jurisdiction, but does not request deferral of prosecution, the federal officials responsible for initiating and prosecuting such cases may file and prosecute the action in the tribal court or forum.

(3) The Secretary may rescind an Indian tribe's concurrent civil jurisdiction over trespass cases under this regulation if the Secretary or a court of competent jurisdiction determines that the tribal court has not adhered to the due process or equal protection requirements of the Indian Civil Rights Act. If it is determined that said rescission is justified, the Secretary shall provide written Notice of the rescission, including the findings justifying the rescission and the steps needed to remedy the violations causing the rescission, to the chief judge of the tribal judiciary or other authorized tribal official should there be no chief judge. If said steps are not taken within 60 days, the Secretary's rescission of concurrent civil jurisdiction shall become final. The affected tribe(s) may appeal a Notice of Rescission under part 2 of title 25.

(4) Nothing shall be construed to prohibit or in any way diminish the authority of a tribe to prosecute individuals under its criminal or civil trespass laws where it has jurisdiction over those individuals.

§ 163.30 Revocable road use and construction permits for removal of commercial forest products.

(a) In accordance with 25 U.S.C. 415 as amended, the Secretary may request tribes and/or other beneficial owners to sign revocable permits designating the Secretary as agent for the landowner and empowering him or her to issue revocable road use and construction permits to users for the purpose of removing forest products.

(b) When a majority of trust interest in a tract has consented, the Secretary may issue revocable road use and construction permits for removal of forest products over and across such land. In addition, the Secretary may act for individual owners when:

(1) One or more of the individual owner(s) of the land or of an interest therein is a minor or a person non compos mentis, and the Secretary finds that such grant, in total or for an interest therein, will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;

(2) The whereabouts of the owner(s) of the land or those with an interest therein are unknown so long as the majority of owner(s) of interests whose whereabouts are known, consent to the grant;

(3) The heirs or devisees of a deceased owner of the land or interest have not been determined, and the Secretary finds the grant will cause no substantial injury to the land or any land owner; or

(4) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain the consent of the majority and finds that such grant in total or an interest therein will cause no substantial injury to the land or the owner(s), that cannot be adequately compensated for by monetary damages.

(c) Nothing in this section shall preclude acquisition of rights-of-way over Indian lands, under 25 CFR part 169, or conflict with provisions of that part.

§163.31 Insect and disease control.

(a) The Secretary is authorized to protect and preserve Indian forest land from disease or insects (Sept. 20, 1922, Ch. 349, 42 Stat. 857). The Secretary shall consult with the authorized tribal representatives and beneficial owners of Indian forest land concerning control actions.

(b) The Secretary is responsible for controlling and mitigating harmful effects of insects and diseases on Indian forest land and will coordinate control actions with the Secretary of Agriculture in accordance with 92 Stat. 365, 16 U.S.C. 2101.

§163.32 Forest development.

Forest development pertains to forest land management activities undertaken to improve the sustainable productivity of commercial Indian forest land. The program shall consist of reforestation, timber stand improvement projects, and related investments to enhance productivity of commercial forest land with emphasis on accomplishing on-the-ground projects. Forest development funds will be used to reestablish, maintain, and/or improve growth of commercial timber species and control stocking levels on commercial forest land. Forest development activities will be planned and executed using benefit-cost analyses as one of the determinants in establishing priorities for project funding.

§163.33 Administrative appeals.

Any challenge to action under 25 CFR part 163 taken by an approving officer or subordinate official exercising delegated authority from the Secretary shall be exclusively through administrative appeal or as provided in the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended). Such appeal(s) shall be filed in accordance with the provisions of 25 CFR part 2, Appeals from administrative actions, except that an appeal of any action under part 163 of this title shall:

(a) Not stay any action unless otherwise directed by the Secretary; and

(b) Define ''interested party'' for purposes of bringing such an appeal or participating in such an appeal as any person whose own direct economic interest is adversely affected by an action or decision.

§163.34 Environmental compliance.

Actions taken by the Secretary under the regulations in this part must comply with the National Environmental Policy Act of 1969, applicable Council on Environmental Quality Regulations, and tribal laws and regulations.

§163.35 Indian forest land assistance account.

(a) At the request of a tribe's authorized representatives, the Secretary may establish tribal-specific forest land assistance accounts within the trust fund system.

(b) Deposits shall be credited either to forest transportation or to general forest land management accounts.

(c) Deposits into the accounts may include:

(1) Funds from non-federal sources related to activities on or for the Indian forest land of such tribe's reservation;

(2) Donations or contributions;

(3) Unobligated forestry appropriations for the tribe;

(4) User fees; and

(5) Funds transferred under Federal interagency agreements if otherwise authorized by law.

(d) For purposes of §163.35(c)(3) of this part; unobligated forestry appropriations shall consist of balances that remain unobligated at the end of the fiscal year(s) for which funds are appropriated for the benefit of an Indian tribe.

(e) Funds in the Indian forest land assistance account plus any interest or other income earned shall remain available until expended and shall not be available to otherwise offset Federal appropriations for the management of Indian forest land.

(f) Funds in the forest land assistance account shall be used only for forest

land management activities on the reservation for which the account is established.

(g) Funds in a tribe's forest land assistance account shall be expended in accordance with a plan approved by the tribe and the Secretary.

(h) The Secretary may, where circumstances warrant, at the request of the tribe, or upon the Secretary's own volition, conduct audits of the forest land assistance accounts and shall provide the audit results of to the tribe(s).

§ 163.36 Tribal forestry program financial support.

(a) The Secretary shall maintain a program to provide financial support to qualifying tribal forestry programs. A qualifying tribal forestry program is an organization or entity established by a tribe for purposes of carrying out forest land management activities. Such financial support shall be made available through the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended).

(b) The authorized tribal representatives of any category 1, 2, or 3 reservation (as defined under § 163.36(b)(1)–(3)) with an established tribal forestry program or with an intent to establish such a program for the purpose of carrying out forest land management activities may apply and qualify for tribal forestry program financial support. Reservation categories, as determined by the Secretary, are defined as:

(1) Category 1 includes major forested reservations comprised of more than 10,000 acres of trust or restricted commercial timberland or having more than a one million board foot harvest of forest products annually.

(2) Category 2 includes minor forested reservations comprised of less than 10,000 acres of trust or restricted commercial timberland and having less than a one million board foot harvest of forest products annually, or whose forest resource is determined by the Secretary to be of significant commercial timber value.

(3) Category 3 includes significant woodland reservations comprised of an identifiable trust or restricted forest area of any size which is lacking a timberland component, and whose forest resource is determined by the Secretary to be of significant commercial woodland value.

(c) A group of tribes that has either established or intends to establish a cooperative tribal forestry program to provide forest land management services to their reservations may apply and qualify for tribal forestry program financial support. For purposes of financial support under this provision, the cooperative tribal forestry program and the commercial forest acreage and annual allowable cut which it represents may be considered as a single reservation.

(d) Before the beginning of each Federal fiscal year, tribes applying to qualify for forestry program financial support shall submit application packages to the Secretary which:

(1) Document that a tribal forestry program exists or that there is an intent to establish such a program;

(2) Describe forest land management activities and the time line for implementing such activities which would result from receiving tribal forestry program financial support; and

(3) Document commitment to sustained yield management.

(e) Tribal forestry program financial support shall provide professional and technical services to carry out forest land management activities and shall be based on levels of funding assistance as follows:

(1) Level one funding assistance shall be equivalent to a Federal Employee General Pay Schedule GS 9 step 5 position salary plus an additional 40 percent of the annual salary for such a position to pay for fringe benefits and support costs;

(2) Level two funding assistance shall be equivalent to an additional Federal Employee General Pay Schedule GS 9 step 5 position salary plus an additional 40 percent of the annual salary for such a position to pay for fringe benefits and support costs; and

(3) Level three funding assistance shall be based on equal distribution of remaining funds among qualifying applicants.

(f) Determination of qualification for level of funding assistance shall be as follows:

(1) A funding level qualification value shall be determined for each eligible applicant using the formula below. Such formula shall only be used to determine which applicants qualify for level one funding assistance. Acreage and allowable cut data used in the formula shall be as maintained by the Secretary. Eligible applicants with a funding level qualification value of one (1) or greater shall qualify for level one assistance.

Funding Level Qualification Formula

$$\left[\frac{.5\times \text{CA}}{\text{Tot. CA}}+\frac{.5\times \text{AAC}}{\text{Tot. AAC}}\right]\times 1000$$

where:

CA=applicant's total commercial Indian forest land acres;

Tot. CA=national total commercial Indian forest land acres;

AAC=applicant's total allowable annual cut from commercial Indian forest land acres; and

Tot. AAC=national total allowable annual cut from commercial Indian forest land acres.

(2) All category 1 or 2 reservations that are eligible applicants under §163.36(d) of this part are qualified and eligible for level two assistance.

(3) All category 1, 2 or 3 reservations that are eligible applicants under §163.36(d) of this part are qualified and eligible for level three assistance.

(g) Tribal forestry program financial support funds shall be distributed based on the following:

(1) All requests from reservations qualifying for level one funding assistance must be satisfied before funds are made available for level two funding assistance;

(2) All requests from reservations qualifying for level two funding assistance must be satisfied before funds are made available for level three funding assistance; and

(3) If available funding is not adequate to satisfy all requests at a particular level of funding, funds will be evenly divided among tribes qualifying at that level.

§163.37 Forest management research.

The Secretary, with the consent of the authorized Indian representatives' is authorized to perform forestry research activities to improve the basis for determining appropriate land management activities to apply to Indian forest land.

Subpart C—Forestry Education, Education Assistance, Recruitment and Training

§163.40 Indian and Alaska Native forestry education assistance.

(a) *Establishment and evaluation of the forestry education assistance programs.* (1) The Secretary shall establish within the Bureau of Indian Affairs Division of Forestry an education committee to coordinate and implement the forestry education assistance programs and to select participants for all the forestry education assistance programs with the exception of the cooperative education program. This committee will be, at a minimum, comprised of a professional educator, a personnel specialist, an Indian or Alaska Native who is not employed by the Bureau of Indian Affairs, and a professional forester from the Bureau of Indian Affairs.

(2) The Secretary, through the Bureau of Indian Affairs Division of Forestry, shall monitor and evaluate the forestry education assistance programs to ensure that there are adequate Indian and Alaska Native foresters and forestry-related professionals to manage the Bureau of Indian Affairs forestry programs and forestry programs maintained by or for tribes and ANCSA Corporations. Such monitoring and evaluating shall identify the number of participants in the intern, cooperative education, scholarship, and outreach programs; the number of participants who completed the requirements to become a professional forester or forestry-related professional; and the number of participants completing advanced degree requirements.

(b) *Forester intern program.* (1) The purpose of the forester intern program is to ensure the future participation of trained, professional Indians and Alaska Natives in the management of Indian and Alaska Native forest land. In

keeping with this purpose, the Bureau of Indian Affairs in concert with tribes and Alaska Natives will work:

(i) To obtain the maximum degree of participation from Indians and Alaska Natives in the forester intern program;

(ii) To encourage forester interns to complete an undergraduate degree program in a forestry or forestry-related field which could include courses on indigenous culture; and

(iii) To create an opportunity for the advancement of forestry and forestry-related technicians to professional resource management positions with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The Secretary, through the Bureau of Indian Affairs Division of Forestry, subject to the availability of personnel resource levels established in agency budgets, shall establish and maintain in the Bureau of Indian Affairs at least 20 positions for the forester intern program. All Indians and Alaska Natives who satisfy the qualification criteria in § 163.40(b)(3) of this part may compete for such positions.

(3) To be considered for selection, applicants for forester intern positions must meet the following criteria:

(i) Be eligible for Indian preference as defined in 25 CFR part 5, subchapter A;

(ii) Possess a high school diploma or its recognized equivalent;

(iii) Be able to successfully complete the intern program within a three year maximum time period; and

(iv) Possess a letter of acceptance to an accredited post-secondary school or demonstrate that such a letter of acceptance will be acquired within 90 days.

(4) The Bureau of Indian Affairs shall advertise vacancies for forester intern positions semiannually, no later than the first day of April and October, to accommodate entry into school.

(5) Selection of forester interns will be based on the following guidelines:

(i) Selection will be on a competitive basis selecting applicants who have the greatest potential for success in the program;

(ii) Selection will take into consideration the amount of time which will be required for individual applicants to complete the intern program;

(iii) Priority in selection will be given to candidates currently employed with and recommended for participation by the Bureau of Indian Affairs, a tribe, a tribal forest enterprise or ANCSA Corporation; and

(iv) Selection of individuals to the program awaiting the letter of acceptance required by § 163.40(b)(3)(iv) of this part may be canceled if such letter of acceptance is not secured and provided to the education committee in a timely manner.

(6) Forester interns shall comply with each of the following program requirements:

(i) Maintain full-time status in a forestry related curriculum at an accredited post-secondary school having an agreement which assures the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry related program at a bachelor degree granting institution accredited by the American Association of Universities;

(ii) Maintain good academic standing;

(iii) Enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, the recommending tribe, tribal forest enterprise or ANCSA Corporation for two years for each year in the program; and

(iv) Report for service with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation during any break in attendance at school of more than three weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service.

(7) The education committee established pursuant to § 163.40(a)(1) of this part will evaluate annually the performance of forester intern program participants against requirements enumerated in § 163.40(b)(6) of this part to ensure that they are satisfactorily progressing toward completing program requirements.

(8) The Secretary shall pay all costs for tuition, books, fees and living expenses incurred by a forester intern while attending an accredited post-secondary school.

(c) *Cooperative education program.* (1) The purpose of the cooperative education program is to recruit and develop promising Indian and Alaska Native students who are enrolled in secondary schools, tribal or Alaska Native community colleges, and other post-secondary schools for employment as professional foresters and other forestry-related professionals by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The program shall be operated by the Bureau of Indian Affairs Division of Forestry in accordance with the provisions of 5 CFR 213.3202(a) and 213.3202(b).

(3) To be considered for selection, applicants for the cooperative education program must meet the following criteria:

(i) Meet eligibility requirements stipulated in 5 CFR 213.3202;

(ii) Be accepted into or enrolled in a course of study at a high school offering college preparatory course work, an accredited institution which grants bachelor degrees in forestry or forestry-related curriculums or a post-secondary education institution which has an agreement with a college or university which grants bachelor degrees in forestry or forestry-related curriculums. The agreement must assure the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry related program at the bachelor degree-granting institution.

(4) Cooperative education steering committees established at the field level shall select program participants based on eligibility requirements stipulated in § 163.40(c)(3) of this part without regard to applicants' financial needs.

(5) A recipient of assistance under the cooperative education program shall be required to enter into an obligated service agreement to serve as a professional forester or forestry- related professional with the Bureau of Indian Affairs, a recommending tribe, tribal forest enterprise or ANCSA Corporation for one year in return for each year in the program.

(6) The Secretary shall pay all costs of tuition, books, fees, and transportation to and from the job site to school, for an Indian or Alaska Native student who is selected for participation in the cooperative education program.

(d) *Scholarship program.* (1) The Secretary is authorized, within the Bureau of Indian Affairs Division of Forestry, to establish and grant forestry scholarships to Indians and Alaska Natives enrolled in accredited programs for post-secondary and graduate forestry and forestry-related programs of study as full-time students.

(2) The education committee established pursuant to this part in § 163.40(a)(1) shall select program participants based on eligibility requirements stipulated in §§ 163.40(d)(5), 163.40(d)(6) and 163.40(d)(7) without regard to applicants' financial needs or past scholastic achievements.

(3) Recipients of scholarships must reapply annually to continue funding beyond the initial award period. Students who have been recipients of scholarships in past years, who are in good academic standing and have been recommended for continuation by their academic institution will be given priority over new applicants for selection for scholarship assistance.

(4) The amount of scholarship funds an individual is awarded each year will be contingent upon the availability of funds appropriated each fiscal year and, therefore, may be subject to yearly changes.

(5) Preparatory scholarships are available for a maximum of two and one half academic years of general, undergraduate course work leading to a degree in forestry or forestry-related curriculums and may be awarded to individuals who meet the following criteria:

(i) Must possess a high school diploma or its recognized equivalent; and

(ii) Be enrolled and in good academic standing or accepted for enrollment at an accredited post-secondary school which grants degrees in forestry or forestry-related curriculums or be in a post-secondary institution which has an agreement with a college or university which grants bachelor degrees in

forestry or forestry-related curriculums. The agreement must assure the transferability of a minimum of 55 semester hours from the post-secondary institution which meet the program requirements for a forestry-related curriculum at the bachelor degree granting institution.

(6) Pregraduate scholarships are available for a maximum of three academic years and may be awarded to individuals who meet the following criteria:

(i) Have completed a minimum of 55 semester hours towards a bachelor degree in a forestry or forestry-related curriculum; and

(ii) Be accepted into a forestry or forestry-related bachelor degree-granting program at an accredited college or university.

(7) Graduate scholarships are available for a maximum of three academic years for individuals selected into the graduate program of an accredited college or university that grants advanced degrees in forestry or forestry-related fields.

(8) A recipient of assistance under the scholarship program shall be required to enter into an obligated service agreement to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation for one year for each year in the program.

(9) The Secretary shall pay all scholarships approved by the education committee established pursuant to this part in § 163.40(a)(1), for which funding is available.

(e) *Forestry education outreach.* (1) The Secretary shall establish and maintain a forestry education outreach program within the Bureau of Indian Affairs Division of Forestry for Indian and Alaska Native youth which will:

(i) Encourage students to acquire academic skills needed to succeed in post-secondary mathematics and science courses;

(ii) Promote forestry career awareness that could include modern technologies as well as native indigenous forestry technologies;

(iii) Involve students in projects and activities oriented to forestry related professions early so students realize the need to complete required precollege courses; and

(iv) Integrate Indian and Alaska Native forestry program activities into the education of Indian and Alaska Native students.

(2) The program shall be developed and carried out in consultation with appropriate community education organizations, tribes, ANCSA Corporations, and Alaska Native organizations.

(3) The program shall be coordinated and implemented nationally by the education committee established pursuant to § 163.40(a)(1) of this part.

(f) *Postgraduate studies.* (1) The purpose of the postgraduate studies program is to enhance the professional and technical knowledge of Indian and Alaska Native foresters and forestry-related professionals working for the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporations so that the best possible service is provided to Indian and Alaska Native publics.

(2) The Secretary is authorized to pay the cost of tuition, fees, books and salary of Alaska Natives and Indians who are employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation who have previously received diplomas or degrees in forestry or forestry-related curriculums and who wish to pursue advanced levels of education in forestry or forestry-related fields.

(3) Requirements of the postgraduate study program are:

(i) The goal of the advanced study program is to encourage participants to obtain additional academic credentials such as a degree or diploma in a forestry or forestry-related field;

(ii) The duration of course work cannot be less than one semester or more than three years; and

(iii) Students in the postgraduate studies program must meet performance standards as required by the graduate school offering the study program during their course of study.

(4) Program applicants will submit application packages to the education committee established by § 163.40(a)(1). At a minimum, such packages shall contain a complete SF 171 and an endorsement, signed by the applicant's

supervisor clearly stating the needs and benefits of the desired training.

(5) The education committee established pursuant to §163.40(a)(1) shall select program participants based on the following criteria:

(i) Need for the expertise sought at both the local and national levels;

(ii) Expected benefits, both to the location and nationally; and

(iii) Years of experience and the service record of the employee.

(6) Program participants will enter into an obligated service agreement in accordance with §163.42(a), to serve as a professional forester or forestry-related professional with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation for two years for each year in the program. However, the obligated service requirement may be reduced by the Secretary if the employee receives supplemental funding such as research grants, scholarships or graduate stipends and, as a result, reduces the need for financial assistance. If the obligated service agreement is breached, the Secretary is authorized to pursue collection in accordance with §163.42(b) of this part.

§163.41 Postgraduation recruitment, continuing education and training programs.

(a) *Postgraduation recruitment program.* (1) The purpose of the postgraduation recruitment program is to recruit Indian and Alaska Native graduate foresters and trained forestry technicians into the Bureau of Indian Affairs forestry program or forestry programs conducted by a tribe, tribal forest enterprise or ANCSA Corporation.

(2) The Secretary is authorized to assume outstanding student loans from established lending institutions of Indian and Alaska Native foresters and forestry technicians who have successfully completed a post-secondary forestry or forestry- related curriculum at an accredited institution.

(3) Indian and Alaska Natives receiving benefits under this program shall enter into an obligated service agreement in accordance with §163.42(a) of this part. Obligated service required under this program will be one year for every $5,000 of student loan debt repaid.

(4) If the obligated service agreement is breached, the Secretary is authorized to pursue collection of the student loan(s) in accordance with §163.42(b) of this part.

(b) *Postgraduate intergovernmental internships.* (1) Forestry personnel working for the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation may apply to the Secretary and be granted an internship within forestry-related programs of agencies of the Department of the Interior.

(2) Foresters or forestry-related personnel from other Department of the Interior agencies may apply through proper channels for internships within Bureau of Indian Affairs forestry programs and, with the consent of a tribe or Alaska Native organization, within tribal or Alaska Native forestry programs.

(3) Forestry personnel from agencies not within the Department of the Interior may apply, through proper agency channels and pursuant to an interagency agreement, for an internship within the Bureau of Indian Affairs and, with the consent of a tribe or Alaska Native organization, within a tribe, tribal forest enterprise or ANCSA Corporation.

(4) Forestry personnel from a tribe, tribal forest enterprise or ANCSA Corporation may apply, through proper channels and pursuant to a cooperative agreement, for an internship within another tribe, tribal forest enterprise or ANCSA Corporation forestry program.

(5) The employing agency of participating Federal employees will provide for the continuation of salary and benefits.

(6) The host agency for participating tribal, tribal forest enterprise or ANCSA Corporation forestry employees will provide for salaries and benefits.

(7) A bonus pay incentive, up to 25 percent of the intern's base salary, may be provided to intergovernmental interns at the conclusion of the internship period. Bonus pay incentives will be at the discretion of and funded by

the host organization and will be conditioned upon the host agency's documentation of the intern's superior performance, in accordance with the agency's performance standards, during the internship period.

(c) *Continuing education and training.* (1) The purpose of continuing education and training is to establish a program to provide for the ongoing education and training of forestry personnel employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation. This program will emphasize continuing education and training in three areas:

(i) Orientation training, including tribal-Federal relations and responsibilities;

(ii) Technical forestry education; and

(iii) Developmental training in forest land-based enterprises and marketing.

(2) The Secretary shall implement within the Bureau of Indian Affairs Division of Forestry, an orientation program designed to increase awareness and understanding of Indian culture and its effect on forest management practices and on Federal laws that affect forest management operations and administration in the Indian forestry program.

(3) The Secretary shall implement within the Bureau of Indian Affairs Division of Forestry, a continuing technical forestry education program to assist foresters and forestry-related professionals to perform forest management on Indian forest land.

(4) The Secretary shall implement, within the Bureau of Indian Affairs Division of Forestry, a forest land-based forest enterprise and marketing training program to assist with the development and use of Indian and Alaska Native forest resources.

§ 163.42 Obligated service and breach of contract.

(a) *Obligated service.* (1) Individuals completing forestry education programs with an obligated service requirement may be offered full time permanent employment with the Bureau of Indian Affairs, a tribe, tribal forest enterprise or ANCSA Corporation to fulfill their obligated service within 90 days of the date all program education requirements have been completed. If such employment is not offered within the 90-day period, the student shall be relieved of obligated service requirements. Not less than 30 days prior to the commencement of employment, the employer shall notify the participant of the work assignment, its location and the date work must begin. If the employer is other than the Bureau of Indian Affairs, the employer shall notify the Secretary of the offer for employment.

(2) Qualifying employment time eligible to be credited to fulfilling the obligated service requirement will begin the day after all program education requirements have been completed, with the exception of the forester intern program, which includes the special provisions outlined in §163.40(b)(6)(iv). The minimum service obligation period shall be one year of full-time employment.

(3) The Secretary or other qualifying employer reserves the right to designate the location of employment for fulfilling the service obligation.

(4) A participant in any of the forestry education programs with an obligated service requirement who receives a degree may, within 30 days of the degree completion date, request a deferment of obligated service to pursue postgraduate or postdoctoral studies. In such cases, the Secretary shall issue a decision within 30 days of receipt of the request for deferral. The Secretary may grant such a request, however, deferments granted in no way waive or otherwise affect obligated service requirements.

(5) A participant in any of the forestry education programs with an obligated service requirement may, within 30 days of the date all program education requirements have been completed, request a waiver of obligated service based on personal or family hardship. The Secretary may grant a full or partial waiver or deny the request for waiver. In such cases, the Secretary shall issue a decision within 30 days of receipt of the request for waiver.

(b) *Breach of contract.* Any individual who has participated in and accepted financial support under forestry education programs with an obligated service requirement and who does not

accept employment or unreasonably terminates such employment by their own volition will be required to repay financial assistance as follows:

(1) *Forester intern program*—Amount plus interest equal to the sum of all salary, tuition, books, and fees that the forester intern received while occupying the intern position. The amount of salary paid to the individual during breaks in attendance from school, when the individual was employed by the Bureau of Indian Affairs, a tribe, tribal forest enterprise, or ANCSA Corporation, shall not be included in this total.

(2) *Cooperative education program*—Amount plus interest equal to the sum of all tuition, books, and fees that the individual received under the cooperative education program.

(3) *Scholarship program*—Amount plus interest equal to scholarship(s) provided to the individual under the scholarship program.

(4) *Postgraduation recruitment program*—Amount plus interest equal to the sum of all the individual's student loans assumed by the Secretary under the postgraduation recruitment program.

(5) *Postgraduate studies program*—Amount plus interest equal to the sum of all salary, tuition, books, and fees that the individual received while in the postgraduate studies program. The amount of salary paid to that individual during breaks in attendance from school, when the individual was employed by the Bureau of Indian Affairs, a tribe, a tribal enterprise, or ANCSA Corporation, shall not be included in this total.

(c) *Adjustment of repayment for obligated service performed.* Under forestry education programs with an obligated service requirement, the amount required for repayment will be adjusted by crediting time of obligated service performed prior to breach of contract toward the final amount of debt.

Subpart D—Alaska Native Technical Assistance Program

§ 163.60 Purpose and scope.

(a) The Secretary shall provide a technical assistance program to ANCSA corporations to promote sustained yield management of their forest resources and, where practical and consistent with the economic objectives of the ANCSA Corporations, promote local processing and other value-added activities. For the purpose of this subpart, technical assistance means specialized professional and technical help, advice or assistance in planning, and providing guidance, training and review for programs and projects associated with the management of, or impact upon, Indian forest land, ANCSA corporation forest land, and their related resources. Such technical assistance shall be made available through contracts, grants or agreements entered into in accordance with the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended).

(b) Nothing in this part shall be construed as: Affecting, modifying or increasing the responsibility of the United States toward ANCSA corporation forest land, or affecting or otherwise modifying the Federal trust responsibility towards Indian forest land; or requiring or otherwise mandating an ANCSA corporation to apply for a contract, grant, or agreement for technical assistance with the Secretary. Such applications are strictly voluntary.

§ 163.61 Evaluation committee.

(a) The Secretary shall establish an evaluation committee to assess and rate technical assistance project proposals. This committee will include, at a minimum, local Bureau of Indian Affairs and Alaska Native representatives with expertise in contracting and forestry.

§ 163.62 Annual funding needs assessment and rating.

(a) Each year, the Secretary will request a technical assistance project needs assessment from ANCSA corporations. The needs assessments will provide information on proposed project goals and estimated costs and benefits and will be rated by the evaluation committee established pursuant to § 163.61 for the purpose of making funding recommendations to the Secretary. To the extent practicable, such

recommendations shall achieve an equitable funding distribution between large and small ANCSA corporations and shall give priority for continuation of previously approved multi-year projects.

(b) Based on the recommendations of the evaluation committee, the Secretary shall fund such projects, to the extent available appropriations permit.

§ 163.63 Contract, grant, or agreement application and award process.

(a) At such time that the budget for ANCSA corporation technical assistance projects is known, the Secretary shall advise the ANCSA corporations on which projects were selected for funding and on the deadline for submission of complete and detailed contract, grant or agreement packages.

(b) Upon the request of an ANCSA corporation and to the extent that funds and personnel are available, the Bureau of Indian Affairs shall provide technical assistance to ANCSA corporations to assist them with:

(1) Preparing the technical parts of the contract, grant, or agreement application; and

(2) Obtaining technical assistance from other Federal agencies.

Subpart E—Cooperative Agreements

§ 163.70 Purpose of agreements.

(a) To facilitate administration of the programs and activities of the Department of the Interior, the Secretary is authorized to negotiate and enter into cooperative agreements between Indian tribes and any agency or entity within the Department. Such cooperative agreements include engaging tribes to undertake services and activities on all lands managed by Department of the Interior agencies or entities or to provide services and activities performed by these agencies or entities on Indian forest land to:

(1) Engage in cooperative manpower and job training and development programs;

(2) Develop and publish cooperative environmental education and natural resource planning materials; and

(3) Perform land and facility improvements, including forestry and other natural resources protection, fire protection, reforestation, timber stand improvement, debris removal, and other activities related to land and natural resource management.

(b) The Secretary may enter into such agreements when he or she determines the public interest will be benefited. Nothing in § 163.70(a) shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law.

§ 163.71 Agreement funding.

In cooperative agreements, the Secretary is authorized to advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities, or equipment without regard to the provisions of 31 U.S.C. 3324, relating to the advance of public moneys.

§ 163.72 Supervisory relationship.

In any agreement authorized by the Secretary, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise, as mutually agreed to, but shall not be deemed to be Federal employees other than for purposes of 28 U.S.C. 2671 through 2680, and 5 U.S.C. 8101 through 8193.

Subpart F—Program Assessment

§ 163.80 Periodic assessment report.

The Secretary shall commission every ten years an independent assessment of Indian forest land and Indian forest land management practices under the guidelines established in § 163.81 of this part.

(a) Assessments shall be conducted in the first year of each decade (e.g., 2000, 2010, etc.) and shall be completed within 24 months of their initiation date. Each assessment shall be initiated no later than November 28 of the designated year.

(b) Except as provided in § 163.83 of this part, each assessment shall be conducted by a non-Federal entity knowledgeable of forest management practices on Federal and private land. Assessments will evaluate and compare

investment in and management of Indian forest land with similar Federal and private land.

(c) Completed assessment reports shall be submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Select Committee on Indian Affairs of the United States Senate and shall be made available to Indian tribes.

§ 163.81 Assessment guidelines.

Assessments shall be national in scope and shall include:

(a) An in-depth analysis of management practices on, and the level of funding by management activity for, specific Indian forest land compared with similar Federal and private forest land;

(b) A survey of the condition of Indian forest land, including health and productivity levels;

(c) An evaluation of the staffing patterns, by management activity, of forestry organizations of the Bureau of Indian Affairs and of Indian tribes;

(d) An evaluation of procedures employed in forest product sales administration, including preparation, field supervision, and accountability for proceeds;

(e) An analysis of the potential for streamlining administrative procedures, rules and policies of the Bureau of Indian Affairs without diminishing the Federal trust responsibility;

(f) A comprehensive review of the intensity and utility of forest inventories and the adequacy of Indian forest land management plans, including their compatibility with other resource inventories and applicable integrated resource management plans and their ability to meet tribal needs and priorities;

(g) An evaluation of the feasibility and desirability of establishing or revising minimum standards against which the adequacy of the forestry program of the Bureau of Indian Affairs in fulfilling its trust responsibility to Indian forest land can be measured;

(h) An evaluation of the effectiveness of implementing the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended) in regard to the Bureau of Indian Affairs forestry program;

(i) A recommendation of any reforms and increased funding and other resources necessary to bring Indian forest land management programs to a state-of-the-art condition; and

(j) Specific examples and comparisons from across the United States where Indian forest land is located.

§ 163.82 Annual status report.

The Secretary shall, within 6 months of the end of each fiscal year, submit to the Committee on Interior and Insular Affairs of the United States House of Representatives, the Select Committee on Indian Affairs of the United States Senate, and to the affected Indian tribes, a report on the status of Indian forest land with respect to attaining the standards, goals and objectives set forth in approved forest management plans. The report shall identify the amount of Indian forest land in need of forestation or other silvicultural treatment, and the quantity of timber available for sale, offered for sale, and sold, for each Indian tribe.

§ 163.83 Assistance from the Secretary of Agriculture.

The Secretary of the Interior may ask the Secretary of Agriculture, through the Forest Service, on a nonreimbursable basis, for technical assistance in the conduct of such research and evaluation activities as may be necessary for the completion of any reports or assessments required by § 163.80 of this part.

PART 166—GENERAL GRAZING REGULATIONS

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AUTHORITY: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; and by sec. 6, 69 Stat. 986, 25 U.S.C. 466. Interpret or apply R.S. 2078, 25 U.S.C. 68; R.S. 2117, 25 U.S.C. 179; sec. 3, 26 Stat. 795, 25 U.S.C. 397; sec. 1, 28 Stat. 305, 25 U.S.C. 402; sec. 4, 36 Stat. 856, 25 U.S.C. 403; sec. 1, 39 Stat. 128, 25 U.S.C. 394; sec. 1, 41 Stat. 1232, 25 U.S.C. 393; C. 158, 47 Stat. 1417, 25 U.S.C. 413; secs. 16, 17, 48 Stat. 987, 988, 25 U.S.C. 476, 477; C. 210, 53 Stat. 840, 25 U.S.C. 68a, 87a; C. 554, 54 Stat. 745, 25 U.S.C. 380; secs. 1, 2, 4, 5, 6, 69 Stat. 539, 540, 25 U.S.C. 415, 415a, 415b, 415c, 415d.

SOURCE: 34 FR 9383, June 14, 1969, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

CROSS REFERENCES: For Navajo grazing regulations, see part 167 of this chapter. For leasing and permitting of restricted Indian lands for farming, farm pasture, and business, see part 162 of this chapter.

§ 166.1 Definitions.

(a) ''Tribe'' means a tribe, band, community, group, or pueblo of Indians.

(b) ''Governing body'' means the general council or the tribal committee, board, or other membership body recognized by the Secretary as having the authority to act for the tribe, band, community, pueblo, or group of Indians.

(c) ''Secretary'' means the Secretary of the Interior.

(d) ''Commissioner'' means the Commissioner of Indian Affairs.

(e) ''Area Director'' means the Director of any established Area of the Bureau of Indian Affairs.

(f) ''Superintendent'' means the Superintendent of any Agency of the Bureau of Indian Affairs.

(g) ''Individually owned land'' means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

(h) ''Tribal land'' means land or any interest therein held by the United States in trust for a tribe, band, community, group, or pueblo of Indians subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

(i) ''Government land'' means land, other than tribal land, acquired or reserved by the United States for Indian Bureau administrative purposes which is not immediately needed for the purposes for which it was acquired or reserved and land transferred to or placed under the jurisdiction of the Bureau of Indian Affairs.

(j) ''Range unit'' means a tract of range land designated as a management unit for administration of grazing. A range unit may consist of tribal, individually owned or Government land or any combination thereof consolidated for grazing administration.

(k) ''Permit'' means a revocable privilege granted in writing limited to entering on and utilizing forage by domestic livestock on a specified tract of land.

(l) ''Adult tribal members,'' for the purposes of this part, means a member of an Indian tribe, band, community, pueblo, or group, who has attained the age of 21 years.

(m) ''Immediate family'' means the spouse, brothers, sisters, lineal ancestors, and descendants of an adult tribal member.

(n) ''Allocation'' means the apportionment of grazing privileges without competitive bidding including the determination of who may graze livestock, the number and kind of livestock, and the place such livestock will be grazed.

§ 166.2 General authority.

It is within the authority of the Secretary to protect individually owned and tribal lands against waste and to prescribe rules and regulations under

which these lands may be leased or permitted for grazing. Improper use which threatens destruction of the range and soil resource is properly considered waste. With respect to reservations upon which the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), is applicable, the action of the Secretary must follow the directions in section 6 of that Act which are: ''The Secretary of the Interior is directed to make rules and regulations for the operation and maintenance of Indian forestry units on the principle of sustained-yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes.'' It is also the Secretary's responsibility to improve the economic well being of the Indian people through proper and efficient resource use.

§166.3 Objectives.

It is the purpose of the regulations of this part to:

(a) Preserve, through proper grazing management, the land, water, forest, forage, wildlife, and recreational values on the reservations and improve and build up these resources where they have deteriorated.

(b) Promote use of the range resource by Indians to enable them to earn a living, in whole or in part, through the grazing of their own livestock.

(c) Provide for the administration of grazing privileges in a manner which will yield the highest return consistent with sustained yield land management principles and the fulfillment of the rights and objectives of tribal governing bodies and individual land owners.

§166.4 Regulations; scope; exceptions.

The grazing regulations of this part apply to individually owned, tribal, and Government lands under the jurisdiction of the Bureau of Indian Affairs, except as superseded by special written instructions from the Commissioner in particular instances, or by provisions of any tribal constitution, bylaws, or charter, heretofore duly ratified or approved, or by any tribal action authorized thereunder. All forms necessary to carry out the purpose of the regulations of this part shall be approved by the Commissioner. Grazing lands not in range units established under this part may be leased pursuant to part 162 of this chapter.

§166.5 Establishment of range units.

The conservation, development, and effective utilization of the range resource requires consolidation of small individual and tribal ownerships and the organization of the total range area into management units. This shall be done under the direction of the Superintendent, after consultation with the Indians, in a manner which will best meet the requirements of Indian needs, land ownership status, and proper land use. Any contiguous block of Indian and Government rangeland in excess of 2,560 acres shall be designated as one or more range units. Range units smaller than 2,560 acres may also be established under this procedure.

§166.6 Grazing capacity.

Subject to approval of the Area Director, the Superintendent shall prescribe the maximum number of livestock which may be grazed on each range unit and the season, or seasons, of use to achieve the objectives cited in §166.3. The grazing capacity so prescribed will take into consideration the implementation of tribal objectives and programs requiring grazeable land to support wildlife and other nonlivestock uses. Stocking rates shall be reviewed on a continuing basis and adjusted as conditions warrant.

§166.7 Grazing on range units authorized by permit.

All grazing use of range units shall be authorized by a grazing permit except Indians' use of their own land pursuant to §166.8. Permits on range units containing trust or restricted land which is entirely tribally owned, or is in combination with Government land, may be issued by the governing body, subject to approval by the Superintendent, or by the Superintendent pursuant to §166.9 (b). The Superintendent shall issue all permits on

range units containing trust or restricted land which is entirely individually owned or is in combination with tribal and or Government land.

[34 FR 9383, June 14, 1969; 34 FR 11263, July 4, 1969. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 166.8 Grazing exempt from permit.

Adult tribal members of any tribe may, without approval of the Superintendent, graze livestock on their own individually owned grazing land or other grazing land for which they are responsible on behalf of those non compos mentis, on behalf of their minor children and on behalf of minor children or others to whom they stand in loco parentis when such children do not have a legal representative. The term ''graze livestock'' means the grazing of livestock which are either owned by those persons listed above, or if not owned, are under their direct management and supervision. Grazing of livestock under any other arrangement requires approval of the Superintendent.

§ 166.9 Authority of the Superintendent to include land in grazing permits.

(a) The Superintendent may include individually owned land in grazing permits on behalf of:

(1) Orphaned minors;

(2) Persons who are non compos mentis and without legal guardians;

(3) Undetermined heirs or devisees of a deceased Indian owner;

(4) Adults whose whereabouts are unknown;

(5) Heirs or devisees, none of whom are using the land and who have not been able to agree upon the permitting of their land during a 3-month period, and after notice from the Superintendent given by posting a general notice in all Post Offices on the reservation and with the tribal governing body;

(6) Those Indian land owners listed in § 166.8 who give the Superintendent written authority to grant grazing privileges; and

(7) Any other Indian minor or person who is non compos mentis or otherwise under legal disability, if that person's guardian, conservator, or other fiduciary, appointed by a State court or by a tribal court or court of Indian offenses operating under an approved constitution or law and order code, gives the Superintendent written authority to grant grazing privileges.

(b) The Superintendent may include tribal land in grazing permits on behalf of governing bodies who give written authority. When timely action is not taken by the governing body to give the Superintendent written authority, or to issue permits pursuant to § 166.7 and the criteria prescribed in § 166.10, the Superintendent may proceed to issue permits on tribal land, subject to veto of the governing body, in order to prevent resource waste or unreasonable economic loss to the tribe or its members. The Superintendent shall notify the governing body in writing of the action he proposes to take and allow a 60-day period during which the tribal veto may be exercised.

(c) The Superintendent may include Government land in grazing permits provided such land is not already under revocable permit to the tribe, in which case, paragraph (b) of this section applies.

§ 166.10 Allocation of grazing privileges.

A tribal governing body may authorize the allocation of grazing privileges without competitive bidding on tribal and tribally controlled Government land to Indian corporations, Indian associations, and adult tribal members of the tribe represented by that governing body. The Superintendent may implement the governing body's allocation program by authorizing the allocation of grazing privileges on individually owned land. The eligibility requirements for allocations shall be prescribed by the governing body, subject to written concurrence of the Superintendent. Where timely action is not taken by the governing body to prescribe satisfactory requirements, the Superintendent shall notify it in writing that it has a 60-day period during which it may present requirements. Subject to the approval of the Area Director, the Superintendent shall prescribe the eligibility requirements after expiration of the 60-day period in

the event satisfactory action is not taken by the governing body.

[34 FR 9383, June 14, 1969, as amended at 34 FR 11544, July 12, 1969. Redesignated at 47 FR 13327, Mar. 30, 1982]

§166.11 Competitive and negotiated sale of grazing privileges.

(a) Grazing privileges not exempt from permit under §166.8 and not reserved for allocation under §166.10 shall be advertised for competitive public sale by the Superintendent except as otherwise provided in paragraph (b) of this section. Advertisements shall be:

(1) Approved by the Area Director prior to publication;

(2) Shall be for a 30-day period unless otherwise authorized by the Area Director;

(3) Shall call for sealed bids;

(4) May provide for oral auction subsequent to sealed bid opening at the discretion of the governing body; and

(5) Shall limit the privilege of meeting high sealed bids of non-Indians to adult tribal members, Indian corporations, and Indian associations, according to preferences determined by the governing body and concurred in writing by the Area Director.

(b) The Area Director may authorize the issuance of grazing permits by negotiation when in his discretion no useful purpose would be served by advertisement. Negotiated permits shall be limited to the grazing capacity established pursuant to §166.6.

[34 FR 9383, June 14, 1969; 34 FR 11263, July 4, 1969. Redesignated at 47 FR 13327, Mar. 30, 1982]

§166.12 Kind of livestock.

(a) Tribal governing bodies may determine, subject to the grazing capacity prescribed by the Superintendent and Area Director the kind of livestock, e.g., cattle, sheep, etc., that may be grazed on range units composed entirely of tribal land or in combination with Government land.

(b) The Superintendent shall designate the same kind of livestock to be grazed on range units composed entirely of individually owned land, or in combination with tribal and or Government land, as that determined by governing bodies pursuant to paragraph (a) of this section, unless the principles of proper land management or efficient permit administration require otherwise.

§166.13 Establishment of grazing fees.

(a) Tribal governing bodies may determine the minimum rental rate to be charged for the use of tribal lands (1) included in advertisements for public sale and (2) by allocation, except that allocated Indian permittees shall be required to pay not less than the reservation minimum rental rate established by the Area Director pursuant to paragraph (b) of this section for all non-Indian owned livestock which they may be authorized to graze on tribal lands. Prior to these determinations, the Superintendent shall provide the tribe with all available information including appraisal data concerning the value of grazing on tribal lands.

(b) The Area Director shall establish a reservation minimum acceptable grazing rental rate. The reservation minimum rate shall apply to all grazing privileges permitted on individually owned lands, to non-Indian owned livestock which allocated permittees may be authorized to graze on tribal lands, and to all tribal lands when the governing body fails to establish a rate pursuant to paragraph (a) of this section. Except as otherwise provided in paragraph (c) of this section, the rate established shall provide a fair annual return to the land owners.

(c) Indian landowners, in giving the Superintendent written authority to grant grazing privileges on their individually owned land, may stipulate a minimum rate above the reservation minimum set by the Area Director if justified because of above average value. They may also stipulate a lower rate than the reservation minimum, subject to approval of the Superintendent when the permittee is a member of the landowner's immediate family.

§166.14 Duration of grazing permits.

(a) Tribal governing bodies may determine the duration of grazing permits on range units composed entirely of tribal land or in combination with Government land, subject to a maximum period of 5 years except when substantial development or improvement

is required, in which case the maximum period shall be 10 years.

(b) Subject to the same duration limits set forth in paragraph (a) of this section, the Superintendent shall prescribe the same period of duration for permits on range units composed entirely of individually owned land, or in combination with tribal and/or Government land, as that determined by governing bodies pursuant to paragraph (a) of this section unless the principles of proper land management or efficient permit administration require otherwise.

(c) Permits for a period in excess of 5 years shall provide for review of the grazing fees by the Superintendent at the end of the first 5 years and for adjustment as necessary.

§ 166.15 Assignment, modification, and cancellation of permits.

(a) Grazing permits shall not be assigned, subpermitted, or transferred without the consent of the contracting parties, including the surety, and the approval of the Superintendent.

(b) The Superintendent may revoke or withdraw all or any part of a grazing permit by cancellation or modification on 30 days' written notice for violation of the permit or because of termination of trust status of permitted land. In case of cancellation or modification because of trust termination the action shall be effected on the next annual anniversary date of the grazing permit following the date of notice.

(c) The Superintendent may revoke or withdraw all or any part of a grazing permit by cancellation or modification on 180 days' written notice for allocated Indian use or for grazing exempt from permit pursuant to § 166.8. Unless otherwise mutually agreed upon by the interested parties, such actions shall be effected on the annual anniversary date of the grazing permit following the date of notice except when such timeliness of notice is not possible, in which case deferment of the intended action shall not be required to extend beyond 180 days from the date of the notice. Rental fees for grazing privileges taken for allocation shall not be less than those paid by the preceding permittee.

§ 166.16 Conservation and land use provisions.

Grazing operations shall be conducted in accordance with recognized principles of good range management. Stipulations or management plans necessary to accomplish this may be made a part of the grazing permit.

§ 166.17 Range improvements; ownership.

Improvements placed on the permitted land shall be considered affixed to the land unless specifically excepted therefrom under the permit terms. Written permission to construct and to remove improvements must be secured from the Superintendent. The permit will specify the maximum time allowed for removal of improvements so excepted.

§ 166.18 Payment of tribal fees and taxes.

Fees and taxes exclusive of annual grazing fees, assessed by the tribe in connection with grazing permits and with the approval of the Commissioner or Secretary, shall be billed for by the tribe and paid annually in advance to the designated tribal official. Failure to make payment will subject the grazing permit to cancellation and may disqualify the permittee for future permits.

§ 166.19 Special permit requirements and provisions.

(a) All grazing permits shall contain the following provisions:

(1) While the lands covered by the permit are in trust or restricted status, all of the permittee's obligations under the permit and the obligation of his sureties are to the United States as well as to the owner of the land.

(2) Nothing contained in the permit shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the permit.

(3) The permittee agrees he will not use, cause, or allow to be used any part of the permitted area for any unlawful conduct or purpose.

(4) The permit authorizes the grazing of livestock only and the permittee shall not utilize the permitted area for

hay cutting, hunting, post or timber cutting, or any other use without written authorization from the responsible Indian or Federal authority.

§ 166.20 Bonding and insurance requirements.

(a) A performance bond satisfactory to the Superintendent may be required in an amount that will reasonably assure performance of the contractual obligations. A bond, when required, may be for the purpose of guarantying the estimated construction cost of any improvement to be placed on the land which will become the property of the landowner or to insure compliance with special or additional contractual obligations.

(b) The permittee may be required to provide insurance in an amount adequate to protect any improvements on the permitted premises; and may also be required to furnish appropriate liability insurance and such other insurance as may be necessary to protect the landowner's interest.

§ 166.21 Payment of annual grazing fees.

Annual grazing fees for all grazing permits shall be paid in advance and the date due shall be a provision of the permit. Payment shall be made to the Bureau of Indian Affairs unless otherwise provided by the permit.

§ 166.22 Payment of preparation fees.

Permittees shall pay annually in advance the following fee, in addition to the grazing fee, to cover the cost of work performed in the preparation of grazing permits: *Provided,* That where all or any part of the expenses of the work are paid from tribal funds an alternate schedule of fees may be approved by the Commissioner:

ANNUAL GRAZING FEE

Preparation fee	Percent
On the first $500	3
On the next $4,500	2
On all above $5,000	1

In no event shall the fee be less than $2 nor exceed $250.

§ 166.23 On-and-off grazing privileges.

The permittee may be allowed credit for the grazing capacity of other range lands not covered by the permit, but which are owned or controlled by him and grazed in common with the permitted lands as a part of the range unit. The grazing capacity will be determined by the Superintendent and shown on the grazing permit.

§ 166.24 Livestock trespass.

(a) *Acts prohibited on Indian trust, restricted or Government lands.* The following acts are prohibited on Indian trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs:

(1) The grazing upon or driving across any individually owned, tribal, or Government lands of any livestock without an approved grazing or crossing permit.

(2) Allowing livestock to drift and graze on trust or restricted Indian lands without an approved permit.

(3) The grazing or livestock upon trust or restricted Indian lands within an area closed to grazing of that class of livestock.

(4) The grazing of livestock by permittee upon an area of trust or restricted Indian lands withdrawn from use for grazing purposes to protect it from damage by reason of the improper handling of livestock, after the receipt of notice from the Superintendent of such withdrawal, or refusal to remove livestock upon instructions from the Superintendent when an injury is being done to the Indian lands by reason of improper handling of livestock.

(b) *Unauthorized grazing.* The owner of any livestock grazing in trespass on trust or restricted Indian lands is liable to a penalty of $1 per head for each animal thereof for each day of trespass (except in North Dakota, South Dakota, Nebraska and Minnesota where the penalty shall be $1 per head of cattle regardless of the number of days of trespass), together with the reasonable value of the forage consumed by their livestock and damages to property injured or destroyed, and for expenses incurred in impoundment and disposal. The Superintendent shall take action to collect all such penalties and damages, reimbursement for expenses incurred in impoundment and disposal,

and seek injunctive relief when appropriate. All payments for such penalties and damages shall be credited to the landowners where the trespass occurs except that the value of forage or crops consumed or destroyed may be paid to the lessee of the lands not to exceed the rental paid, and reimbursement for expenses incurred in impoundment and disposal shall be credited as appropriate.

(c) *Notice and order to remove.* (1) When it has been determined that a violation exists and the owner of the unauthorized livestock is known, written notice shall be served upon the alleged violator or his agent by certified mail with return receipt requested, or personal delivery and a copy of the notice shall be sent to any known lien holder. The notice shall set forth the act consituting the violation, the legal description of the land where the livestock were observed, the verification of brands in the State Brand Book, and the regulation alleged to have been violated. The notice shall also instruct the alleged violator to remove the livestock within a specified time, allow a specified time from receipt of the notice to show that there has been no violations, or to make settlement under § 166.24(d). If the alleged violator fails to comply with the notice, the Superintendent may impound the livestock under § 166.24(f).

(2) When neither the owner of the unauthorized livestock nor his representative is known, the Superintendent may proceed to impound the livestock under § 166.24(f).

(d) *Settlement.* The amount due the Indian landowner and/or the United States in settlement for unauthorized grazing use shall be determined by the Superintendent as follows:

(1) A penalty of $1 for each animal thereof for each day of trespass, except in the States of Minnesota, Nebraska, North Dakota, and South Dakota where the penalty shall be $1 for each animal without regard to the number of days of trespass.

(2) A reasonable value of forage consumed based upon the average rate received per month for comparable grazing privileges on the reservation for the kind of livestock concerned, or the estimated commercial value for such privileges if no comparable grazing privileges are sold.

(3) Damages to Indian or Government property injured or destroyed.

(4) All expenses incurred in gathering, impounding, caring for, and disposing of livestock in cases which necessitate impoundment under § 166.24(f).

(5) Neither the imposition of any civil penalty nor any action by the Secretary of the Interior shall preclude either any civil action by the United States, an Indian, or an Indian tribe for damages caused by trespassing livestock or prosecution for any offense involved with such trespass.

(e) *Demand for payment.* Where the livestock have been removed, but satisfactory settlement has not been made within the time prescribed under § 166.24(c), a certified letter, return receipt requested, shall be sent or personally delivered to the livestock owner or his agent, and a copy of the letter shall be sent to any know lien holder. The letter shall demand immediate settlement and advise the violator that unless settlement is received within five working days from date of receipt, the case may be referred to the Department of Justice for appropriate action.

(f) *Impoundment and disposal.* Unauthorized livestock remaining on trust or restricted Indian or Government lands which are not removed therefrom within the period prescribed in § 166.24(c) may be impounded and disposed of by the Superintendent as provided herein:

(1) A written notice of intent to impound shall be sent by certified mail, return receipt requested, or personally delivered to the owner, or his agent, and a copy of the notice shall be sent to any known lien holder. Any time after five days of delivery of the notice, the unauthorized livestock may be impounded.

(2) Where the owner or his agent is unknown, or a known owner or his agent refuses to accept delivery of the notice, a notice of intent to impound shall be published in a local newspaper, posted at the nearest community building and tribal council headquarters, and at a post office near the Indian or Government lands involved. Any time after five days of posting of the notice,

the unauthorized livestock may be impounded.

(3) Unauthorized livestock that are owned by persons given notice under paragraphs (f)(1) and (2) of this section may be impounded without further notice any time within the 12-month period following the effective date of a notice given under this subsection.

(4) Where there is imminent danger that trespassing livestock will severely injure a growing or harvestable crop or substantially destroy the range forage, the livestock may be impounded immediately.

(g) *Notice of public sale.* Following the impoundment of unauthorized livestock, a notice of sale of impounded livestock shall be published in a local newspaper, posted at the nearest community building and tribal council headquarters, and at a post office near the Indian or Government lands involved. The notice will describe the livestock and specify the date, time and place of sale. The date set shall be at least five days after the publication and posting of such notice. Any known owners or agents and known lien holders shall be notified in writing by certified mail, return receipt requested, or by personal delivery of the sale, and the procedure by which the impounded livestock may be redeemed prior to the sale as described in §166.24(h).

(h) *Redemption.* Any owner or known lien holder of the impounded livestock may redeem them at any time before the time set for the sale by submitting proof of ownership and the settlement of all obligations described in §166.24(d).

(i) *Sale.* If the livestock are not redeemed before the time fixed for their sale, they shall be sold at public sale to the highest bidder. If a satisfactory bid is not received, the livestock may be reoffered for sale, condemned and destroyed, or otherwise disposed of. When livestock are sold by the Superintendent pursuant to these regulations, he shall furnish the purchaser a bill of sale or other written instrument evidencing the sale.

(j) *Distribution of proceeds.* The net proceeds of the sale, after deduction of the prescribed penalty and the deduction of the necessary costs and expenses of the Secretary of the Interior as provided in §166.24(d), shall be paid to the owner of the animal upon satisfactory proof of ownership submitted within six months of the date of the sale. Net proceeds of the sale of an animal, not paid to the owner, shall be deposited in the United States Treasury to the credit of the landowners where the trespass occurred.

[45 FR 69446, Oct. 21, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

§166.25 Control of livestock diseases.

Whenever livestock on Indian lands become infected with contagious or infectious diseases, or have been exposed thereto, such livestock must be treated and the movement thereof restricted in accordance with applicable Federal and State laws and tribal ordinances.

PART 167—NAVAJO GRAZING REGULATIONS

Sec.

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AUTHORITY: R.S. 465, 2117, as amended, sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, as amended; 25 U.S.C. 9, 179, 397, 345, 402.

SOURCE: 22 FR 10578, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§167.1 Authority.

It is within the authority of the Secretary of the Interior to protect Indian tribal lands against waste. Subject to regulations of this part, the right exists for Indian tribes to authorize the granting of permits upon their tribal lands and to prescribe by appropriate

tribal action the conditions under which their lands may be used.

§ 167.2 General regulations.

Part 166 of this subchapter authorizes the Commissioner of Indian Affairs to regulate the grazing of livestock on Indian lands under conditions set forth therein. In accordance with this authority and that of the Navajo Tribal Council, the Central Grazing Committee and the District Grazing Committees, the grazing of livestock on the Navajo Reservation shall be governed by the regulations in this part.

§ 167.3 Objectives.

It is the purpose of the regulations in this part to aid the Navajo Indians in achievement of the following objectives:

(a) The preservation of the forage, the land, and the water resources on the Navajo Reservation, and the building up of those resources where they have deteriorated.

(b) The protection of the interests of the Navajo Indians from the encroachment of unduly aggressive and anti-social individuals who may or may not be members of the Navajo Tribe.

(c) The adjustment of livestock numbers to the carrying capacity of the range in such a manner that the livestock economy of the Navajo Tribe will be preserved.

(d) To secure increasing responsibility and participation of the Navajo people, including tribal participation in all basic policy decisions, in the sound management of one of the Tribe's greatest assets, its grazing lands, and to foster a better relationship and a clearer understanding between the Navajo people and the Federal Government in carrying out the grazing regulations.

(e) The improvement of livestock through proper breeding practices and the maintenance of a sound culling policy. Buck and bull pastures may be established and maintained either on or off the reservation through District Grazing Committee and Central Grazing Committee action.

§ 167.4 Regulations; scope; exceptions.

The grazing regulations in this part apply to all lands within the boundaries of the Navajo Reservation held in trust by the United States for the Navajo Tribe and all the trust lands hereafter added to the Navajo Reservation. The regulations in this part do not apply to any of the area described in the Executive order of December 16, 1882, to individually owned allotted lands within the Navajo Reservation nor to tribal purchases, allotted or privately owned Navajo Indian lands outside the exterior boundaries of the Navajo Reservation.

[34 FR 14599, Sept. 19, 1969. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 167.5 Land management districts.

The Commissioner of Indian Affairs has established and will retain the present land management districts within the Navajo Indian Reservation, based on the social and economic requirements of the Navajo Indians and the necessity of rehabilitating the grazing lands. District boundary changes may be made when deemed necessary and advisable by the District Grazing Committees, Central Grazing Committee and Tribal Council, with approval by the Superintendent, Area Director, and the Commissioner of Indian Affairs.

§ 167.6 Carrying capacities.

(a) The Commissioner of Indian Affairs on June 26, 1943, promulgated the authorized carrying capacity for each land management district of the Navajo Reservation.

(b) Recommended adjustments in carrying capacities shall be referred by the Superintendent to District Grazing Committee, Central Grazing Committee, and the Navajo Tribal Council for review and recommendations prior to presentation to the Area Director and the Commissioner of Indian Affairs for approval.

(c) Upon the request of the District Grazing Committee, Central Grazing Committee and Navajo Tribal Council to the Superintendent; recommendations for future adjustments to the established carrying capacities shall be made by Range Technicians based on the best information available through annual utilization studies and range condition studies analyzed along with numbers of livestock and precipitation

data. The recommendations of the Range Technicians shall be submitted to the Superintendent, the Area Director and the Commissioner of Indian Affairs.

(d) Carrying capacities shall be stated in terms of sheep units yearlong, in the ratio of horses, mules, and burros 1 to 5; cattle 1 to 4; goats 1 to 1. The latter figure in each case denotes sheep units. Sheep, goats, cattle, horses, mules, and burros one year of age or older shall be counted against the carrying capacity.

§167.7 Records.

The District Grazing Committee, the Superintendent, and his authorized representatives shall keep accurate records of all grazing permits and ownership of all livestock. Master files shall be maintained by the Superintendent or his authorized representatives.

(a) The District Grazing Committee shall be responsibile for and assist in organizing the sheep and goat dipping and horse and cattle branding program and obtaining the annual live- stock count.

(b) In order to obtain true records of ownership the permittee shall personally appear at the dipping vat or tallying point designated by the Grazing Committee with his or her sheep and goats and at branding and tallying points for cattle and horses. Should the permittee be unable to appear personally he or she shall designate a representative to act for and in his or her behalf. The sheep and goats will be dipped and the cattle and horses will be branded and recorded in the name of the permittee.

(c) The Superintendent shall prepare and keep current a register containing the names of all permittees using the range, the number of each class of stock by age classes grazed annually and the periods during which grazing shall be permitted in each part thereof. An annual stock census will be taken to insure that the carrying capacity is not exceeded. All classes of livestock twelve months of age or over will be counted against range use and permitted number, except that yearling colts will not be counted against permitted numbers on all permits with less than six horses. (Cross Reference §167.9.)

§167.8 Grazing rights.

(a) The Superintendent shall determine grazing rights of bona fide livestock owners based on recommendations of District Grazing Committees. Grazing rights shall be recognized for those permittees having ownership records as established in accordance with §167.7 or who have acquired grazing rights by marriage, inheritance, purchase or division of permits. Whenever the permitted number of sheep units within a district is less than the carrying capacity, new permits to the carrying capacity limit may be granted as provided in §167.9.

(b) All enrolled members of the Navajo Tribe over 18 years of age are eligible to acquire and hold grazing permits. Minors under 18 years of age can get possession of grazing permits only through inheritance or gift, and in each case Trustees must be appointed by the Tribal Courts to manage the permits and livestock of such minors until they become 18 years of age and can hold grazing permits in their own right.

(c) No person can hold a grazing permit in more than one district on the Navajo Reservation.

(d) Determination of rights to grazing permits involved in cases of divorce, separation, threatened family disruption, and permits of deceased permittees shall be the responsibility of the Navajo Court of Indian Offenses under existing laws, rules, and regulations.

§167.9 Grazing permits.

(a) All livestock grazed on the Navajo Reservation must be covered by an authorized grazing permit issued by the Superintendent based upon the recommendations of the District Grazing Committee. All such grazing permits will be automatically renewed annually until terminated. District Grazing Committees shall act on all grazing permit changes resulting from negotiability within their respective Districts. The number of livestock that may be grazed under each permit shall be the number originally permitted plus or minus any changes as indicated

by Transfer Agreements and Court Judgment Orders.

(b) Any permittee who has five or more horses on his current permit will be required to apply any acquired sheep units in classes of stock other than horses. If the purchaser wishes more than his present number of horses, he must have his needs evaluated by the District Grazing Committee. Yearling colts will be counted against permitted number on all permits with six or more horses. Yearling colts will not be counted against permitted number on all permits with less than six horses. In hardship cases the District Grazing Committee may reissue horses removed from grazing permits through negotiability to permit holders who are without sufficient horses on their present permits to meet minimum needs.

(c) No permittee shall be authorized to graze more than ten head of horses or to accumulate a total of over 350 sheep units.

(d) Upon recommendation of the District Grazing Committee and with the approval of the Superintendent, grazing permits may be transferred from one permittee to another in accordance with instructions provided by the Advisory Committee of the Navajo Tribal Council, or may be inherited; provided that the permitted holdings of any individual permittee shall not exceed 350 sheep units or the equivalent thereof. Should inheritance or other acquisition of permits increase the holdings of any permittee to more than 350 sheep units, said permittee shall dispose of all livestock in excess of 350 sheep units not later than November 15 following date of inheritance or other acquisition, and that portion of his or her permit in excess of 350 sheep units within one year from date of inheritance.

(e) By request of a permittee to sublet all or a part of his or her regular grazing permit to a member of his family or to any person who would receive such permit by inheritance, such subletting of permits may be authorized by the District Grazing Committee and the Superintendent or his authorized representative.

§ 167.10 Special grazing permits.

The problem of special grazing permits shall be settled by the Bureau of Indian Affairs working in cooperation with the Tribal Council, or any Committee designated by it, with a view to terminating these permits at a suitable date and with the least hardship to the Indians concerned.

§ 167.11 Tenure of grazing permits.

(a) All active regular grazing permits shall be for one year and shall be automatically renewed annually until terminated. Any Navajo eligible to hold a grazing permit as defined in § 167.8 may become a livestock operator by obtaining an active grazing permit through negotiability or inheritance or both.

(b) In many Districts, and portions of all districts, unused grazing permits or portions of grazing permits are beneficial in aiding range recovery. Each District Grazing Committee will handle each matter of unused grazing permit or portions of grazing permits on individual merits. Where ample forage is available operators will be encouraged to fill their permits with livestock or dispose of their unused permits through negotiability. In those areas where forage is in need of rehabilitation permittees will not be encouraged to stock to their permitted numbers until the range has sufficiently recovered to justify the grazing of additional livestock.

§ 167.12 Grazing fees.

Grazing fees shall not be charged at this time.[1]

[1] Grazing Committees were organized in May 1953. These committees have not had ample time to fully acquaint themselves or the stockmen in their respective districts with all of the various items of range administration and range management. Also the drought of several years has not broken. The Navajo Tribe therefore requests that the matter of establishing regulations regarding the adoption of grazing fees be deferred until such a time as a full understanding of the advantages of fees can be had by the majority of the stockmen in all Districts. The assessment of grazing fees will not aid materially in obtaining proper range use. At this time it is more important that other sections of

§167.13 Trespass.

The owner of any livestock grazing in trespass in Navajo Tribal ranges shall be subject to action by the Navajo Court of Indian Offenses as provided in part 11 of this chapter, however, upon recommendations of the District Grazing Committee, first offenses may be referred to the Central Grazing Committee and the Superintendent or his authorized representative for proper settlement out of court. The following acts are considered as trespass:

(a) Any person who sells an entire permit must dispose of all his livestock or be in trespass. Any person selling a portion of his permit must not run more stock than covered by his remaining permit, or be subject to immediate trespass.

(b) All persons running livestock in excess of their permitted number must by April 25, 1959, either obtain permits to cover their total livestock numbers or reduce to their permitted number, or be in trespass. Additional time may be granted in unusual individual cases as determined and approved by the District Grazing Committee, General Grazing Committee, and the Superintendent or his authorized representative.

(c) Failure to comply with the provisions in §167.9, shall be considered as trespass.

(d) Any person who willfully allows his livestock to drift from one district to another shall be subject to trespass action. The grazing of livestock in customary use areas extending over District Boundary lines, when such customary use areas are defined and agreed upon by the District Grazing Committees involved, shall not be considered as willful trespass.

(e) The owner of any livestock who violates the customary or established use units of other permittees shall be subject to trespass action.

[22 FR 10578, Dec. 24, 1957, as amended at 24 FR 1178, Feb. 17, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

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these grazing regulations be adopted and enforced. Resolution of Navajo Tribal Council No. CJ-22-54 of June 9, 1954.

§167.14 Movement of livestock.

Annually, prior to the normal lamb buying season, the Central Grazing Committee after consultation with District Grazing Committees shall issue regulations covering the buying period and the procedures and methods to be used in moving livestock to market. All movements of livestock other than trucking from buying areas to loading or shipping points must be authorized by Trailing Permits issued by the District Grazing Committees on the approved forms. Failure to comply with this section and with annual lamb buying regulations will be considered as trespass.

§167.15 Control of livestock disease and introduction of livestock.

(a) The District Grazing Committees with the approval of the Superintendent shall require livestock to be dipped, vaccinated, inspected and be restricted in movement when necessary to prevent the introduction and spread of contagious or infectious disease in the economic interest of the Navajo stock owners. Upon the recommendation of the District Grazing Committee livestock shall be dipped annually when such dipping is necessary to prevent the spread of contagious diseases. These annual dippings shall be completed on or before September 1st each year. Livestock, however, may be dipped at other times when necessary. The Superintendent or his authorized representative and the District Grazing Committee may also require the rounding up of cattle, horses, mules, etc., in each District for the purpose of inspection for disease, vaccinating, branding and other related operations.

(b) No livestock shall be brought onto the Reservation without a permit issued by the Superintendent or his authorized representative following inspection, in order to safeguard Indian livestock from infections and contagious disease and to insure the introduction of good quality sires and breeding stock.

(c) Any unusual disease conditions beyond the control measures provided herein shall be immediately reported by the District Grazing Committee to the Chairman of the Navajo Tribal Council and the Superintendent who

shall attempt to obtain specialists and provide emergency funds to control and suppress the disease.

§ 167.16 Fences.

Favorable recommendation from the District Grazing Committee and a written authorization from the Superintendent or his authorized representative must be secured before any fences may be constructed in non-agricultural areas. The District Grazing Committee shall recommend to the Superintendent the removal of unauthorized existing fences, or fences enclosing demonstration areas no longer used as such, if it is determined that such fences interfere with proper range management or an equitable distribution of range privileges. All enclosures fenced for the purpose of protecting agricultural land shall be kept to a size commensurate with the needs for protection of agricultural land and must be enclosed by legal four strand barbed wire fence or the equivalent.

§ 167.17 Construction near permanent livestock water developments.

(a) The District Grazing Committee shall regulate the construction of all dwellings, corrals and other structures within one-half mile of Government or Navajo Tribal developed permanent livestock waters such as springs, wells, and charcos or deep reservoirs.

(b) A written authorization from the District Grazing Committee must be secured before any dwellings, corrals, or other structures may be constructed within one-half mile of Government or Navajo Tribal developed springs, wells and charcos or deep reservoirs.

(c) No sewage disposal system shall be authorized to be built which will drain into springs or stream channels in such a manner that it would cause contamination of waters being used for livestock or human consumption.

PART 168—GRAZING REGULATIONS FOR THE HOPI PARTITIONED LANDS AREA

Sec.

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AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 640d–8, and 640d–18.

SOURCE: 47 FR 39817, Sept. 10, 1982, unless otherwise noted.

§ 168.1 Definitions.

As used in this part, terms shall have the meanings set forth in this section.

(a) ''Secretary'' means the Secretary of Interior or his designee;

(b) ''Area Director'' means the officer in charge of the Phoenix Bureau of Indian Affairs Area Office (or his successor; and/or his authorized representative) to whom has been delegated the authority of the Assistant Secretary—Indian Affairs to act in all matters pertaining to lands partitioned to the Hopi Tribe under its jurisdiction, within the boundaries of the former Joint Use Area.

(c) ''Superintendent'' means the Superintendent, Hopi Agency or his designee.

(d) ''Tribal Government'' means the Hopi Tribal Council, or its duly designated representative.

(e) ''Project Officer'' means the former Special Project Officer of the Bureau of Indian Affairs, Administrative Office, Flagstaff, Arizona 86001, who had been delegated the authority of the Commissioner of Indian Affairs to act in matters respecting the former Joint Use Area.

(f) ''Former Joint Use Area'' means the area established by the United States District Court for the District of Arizona in the case entitled *Healing* v. *Jones*, 210 F. Supp. 125 (1962), which is

inside the Executive order area (Executive order of December 16, 1882) but outside Land Management District 6 and which was partitioned by the judgment of partition dated April 18, 1979.

(g) ''Hopi Partition Area'' means that portion of the Former Joint Use Area which has been added to the Hopi Tribe's reservation.

(h) ''Range Unit'' means a tract of range land designated as a management unit for administration of grazing.

(i) ''Range improvements'' means fences, stockwater devices, corrals, trails and other similar devices or practices which are applied to the land to enhance range productivity or usability.

(j) ''Permit'' means a revocable privilege granted in writing limited to entering on and utilizing forage by domestic livestock on a specified tract of land. The term as used herein shall include written authorizations issued to enable the crossing or trailing of domestic livestock across specified tracts or range units.

(k) ''Interim permit'' means a permit granted to members of the Navajo tribe residing on Hopi Partitioned Lands who meet the qualifications of §168.6(b) in accordance with Pub. L. 93–531 as amended.

(l) ''Animal unit'' (AU) means one adult cow with unweaned calf by her side or equivalent thereof based on comparative forage consumption. Accepted conversion factors are: sheep and goats, one ewe, doe, buck or ram equals 0.25 A.U.; one sheep unit year long (SUYL) equals 0.25 Animal Unit year long; horses and mules, one horse, mule, donkey or burro equals 1.25 A.U.

(m) ''Tribe'' means the Hopi Tribe including all villages and clans.

(n) ''Allocate'' means to apportion grazing, including the determination of who may graze livestock, the number and kind of livestock, and the place such livestock will be grazed.

(o) ''Person awaiting relocation'' means a resident of the Hopi Partitioned Area who meets each of the following criteria:

(1) Is listed on the Bureau of Indian Affairs enumeration (as defined in (q) below);

(2) Has a livestock inventory listed with the project Officer (see (r) below);

(3) Is awaiting relocation under the Settlement Act; and

(4) Was grazing livestock on the date of the entry of the Judgment of Partition, April 18, 1979.

(p) ''Carrying capacity'' means the maximum stocking rate possible without inducing damage to vegetation or related resources.

(q) ''BIA enumeration'' means the list of persons living on and improvements located within the former Joint Use Area obtained by interviews by the Project Officer's staff.

(r) ''Livestock inventory'' means the original list as amended (developed by the Project Officer in 1976–77) of livestock owned by persons having customary grazing use in the former Joint Use Area.

(s) ''Settlement Act'' means the Act of December 22, 1974, 88 Stat. 1712, as amended.

(t) ''Life tenant'' means a person who has applied for and been granted a life estate lease pursuant to section 30 of the Settlement Act, 25 U.S.C. 640d–28.

§168.2 Authority.

It is within the general authority of the Secretary to protect Indian trust lands against waste and to prescribe rules and regulations under which these lands may be leased or permitted for grazing. Also, under the Navajo-Hopi Settlement Act as amended, 25 U.S.C. 640d–8 and 18, the Secretary is authorized and directed to:

(a) Reduce livestock grazing within the former Joint Use Area to carrying capacity,

(b) Restore the grazing range potential of the resource to maximum grazing extent feasible,

(c) Survey, monument and fence the partition boundary,

(d) Protect the rights and property of individuals awaiting relocation or authorized to reside on life estates, and

(e) To administer conservation practices, including grazing control and range restoration activities on the Hopi Partitioned Lands.

§ 168.3 Purpose.

These regulations are issued to implement the Secretary's responsibilities mandated by the Settlement Act and subsequent U.S. District Court Judgement filed May 4, 1982, in the case, *Hopi Tribe* v. *Watt,* Civ. No. 81–272 PCT–EHC. This portion of the regulations apply only to lands partitioned to the Hopi Tribe within the former Joint Use Area.

§ 168.4 Establishment of range units.

The Area Director will use Soil and Range Inventory data to establish range units on the Hopi Partitioned Area to provide for a surface land management program to restore the land to its full grazing potential and maintain that potential to the maximum extent feasible. The establishment of range units on Hopi Partitioned Lands is subject to the concurrence of the Hopi Tribe in accordance with § 168.17 of these regulations.

§ 168.5 Grazing capacity.

(a) The Area Director shall prescribe the maximum number of each kind of livestock which may be grazed on land under his jurisdiction without inducing damage to vegetation or related resources on each range unit and the season or seasons of use to achieve the objectives of the land recovery program required by the Settlement Act.

(b) The Area Director shall review the stocking rate upon which the grazing permits are issued on a continuing basis and adjust that rate as conditions warrant.

§ 168.6 Grazing on range units authorized by permit.

Grazing use on range units is authorized only by permits granted under paragraph (a) or (b) of this section.

(a) *Grazing permits to Hopi tribal members on their partitioned lands.* The Area Director shall assign grazing privileges to the Hopi Tribe for lands within Hopi Partitioned Lands. The tribal government will then allocate use to their tribal members for permit periods not to exceed five years. Grazing use by Hopi tribal enterprises may be authorized. The Area Director will issue permits based on the determination of the Hopi tribal government.

(b) *Interim Grazing Permit for persons awaiting relocation.* Navajo Tribal members who have maintained both a permanent residence on Hopi Partitioned lands; a livestock inventory since enumeration; and meet all the criteria listed in § 168.1(o), shall be eligible for an interim grazing allocation on Hopi Partitioned Lands under the following terms and conditions:

(1) The Area Director shall first verify that an applicant meets the criteria of the definition in § 168.1(o) and will issue all permits.

(2) The permitted number shall not exceed either (i) 10 SUYL (See § 168.1(1)) for each eligible family member, or (ii) the grazing applicant's livestock inventory reduced by voluntary sales as adjusted by reproduction, in accordance with procedures developed by the Project Officer based upon the study by Stubblefield and Camfield, 1975 page 5. The determination of the person to whom permits will be issued and the number of livestock to be permitted will be based on information provided by the permit applicant and an assessment of the number of dependents residing in the immediate household.

(3) The permit shall authorize grazing for a specific number and kind of animal(s) in a specified range unit. Interim grazing permits will not be issued in excess of one-half the authorized carrying capacity of the Hopi Partition area.

(4) Subject to the provisions of § 168.9(b), permits shall expire when the person awaiting relocation is relocated pursuant to the Settlement Act. No interim permit will be issued for a term greater than one year. Permits may be reissued upon application and redetermination of eligibility. All interim permits will expire at the end of the period provided for completion of relocation, Pub. L. 99–190. When a Navajo permit holder discontinues grazing livestock or reduces the number being grazed whether by reason of his relocating or for any other reason, his grazing permit will be cancelled or reduced and no permit will be issued in lieu thereof. The total number of authorized animal units grazed by the

Navajo permit holders awaiting relocation will reduced by the number of animal units authorized under the cancelled or reduced permit.

[47 FR 39817, Sept. 10, 1982, as amended at 51 FR 23052, June 25, 1986]

§ 168.7 Kind of livestock.

Unless determined otherwise by the Area Director for conservation purposes, the Hopi Tribe may determine, subject to the authorized carrying capacity, the kind of livestock that may be grazed by their tribal members on the range units within the Hopi Partitioned Land area.

§ 168.8 Grazing fees.

(a) The rental value of all uses of Hopi Partitioned lands by persons who are not members of the Hopi Tribe, including eligible holders of interim permits, will be determined, and assessed by the Area Director and paid in accordance with 25 U.S.C. 640d–15.

(b) The Hopi Tribe has established an annual grazing fee to be assessed all range users on Hopi Partitioned Lands. The annual Hopi grazing fee shall be paid in full in advance of the annual effective date of the permit, prior to the issuance of a grazing permit. All interim permits will expire at the end of the period provided for completion of relocation, Pub. L. 99–190. Failure of the permittee to make payment in full in advance will be cause to deny issuance of the grazing permit.

[47 FR 39817, Sept. 10, 1982, as amended at 51 FR 23052, June 25, 1986]

§ 168.9 Assignment, modification and cancellation of permits.

(a) Grazing permits to Hopi tribal members shall not be reassigned, subpermitted or transferred without the approval of the permit issuer(s).

(b) The Area Director may revoke or withdraw all or any part of any grazing permit in Hopi Partitioned Lands by cancellation or modification on 30 days written notice of a violation of the permit or special conditions affecting the land or the safety of the livestock thereon, as may result from flood, disaster, drought, contagious diseases, etc. Except in the case of extreme necessity, cancellation or modification shall be effected on the next annual anniversay date of the grazing permit following the date of notice. Revocation or withdrawal of all or any of the grazing permit by cancellation or modification as provided herein is effective on the date the notice of cancellation or modification is received and shall be appealable under 25 CFR part 2.

§ 168.10 Conservation and land use provisions.

Grazing operations shall be conducted in accordance with recognized principles of good range management. Conservation management plans necessary to accomplish this will be made a part of the grazing permit by stipulation.

§ 168.11 Range improvements; ownership; new construction.

Except as provided by the Relocation Act, range improvements placed on the permitted land shall be considered affixed to the land unless specifically excepted therefrom under the permit terms. Written permission to construct or remove improvements must be obtained from the Hopi Tribe.

§ 168.12 Special permit requirements and provisions.

All grazing permits shall contain the following provisions:

(a) Because the lands covered by the permit are in trust status, all of the permittees' obligations on the permit and the obligations of his sureties are to the United States as well as to the beneficial owners of the lands.

(b) The permittee agrees he will not use, cause, or allow to be used any part of the permitted area for any unlawful conduct or purpose.

(c) The permit authorizes only the grazing of livestock.

§ 168.13 Fences.

Fencing will be erected by the Federal Government around the perimeter of the 1882 Executive Order Area, Land Management District 6, and on the boundary of the former Joint Use Area partitioned to each tribe by the Judgment of Partition of April 18, 1979. Fencing of other areas in the former Joint Use Area will be required for a

range recovery program in accordance with the range units established under § 168.4. Such fencing shall be erected at Government expense and ownership shall be clearly identified by appropriate posting on the fencing. Intentional destruction of Federal property will be treated as a violation of 18 U.S.C. 1164.

§ 168.14 Livestock trespass.

The owner of any livestock grazing in trespass on the Hopi Partitioned Lands Area is liable to a civil penalty of $1 per head per day for each animal in trespass, together with the replacement value of the forage consumed and a reasonable value for damages to property injured or destroyed. The Superintendent may take appropriate action to collect all such penalties and damages and seek injunctive relief when appropriate. All payments for such penalties and damages shall be credited to the Tribe. The following acts are prohibited:

(a) The grazing upon or driving across any of the Hopi Partitioned Lands of any livestock without an approved grazing or crossing permit;

(b) Allowing livestock to drift and graze on lands without an approved permit;

(c) The grazing of livestock upon lands within an area closed to grazing of that class of livestock;

(d) The grazing of livestock by permittees upon any land withdrawn from use for grazing purpose to protect it from damage, after the receipt of notice from the Area Director; and

(e) Grazing livestock in excess of those numbers and kinds authorized on a livestock grazing permit approved by the Area Director.

§ 168.15 Control of livestock diseases and parasites.

Whenever livestock within the Hopi Partitioned Lands become infected with contagious or infectious diseases or parasites or have been exposed thereto, such livestock must be treated and the movement thereof restricted in accordance with applicable laws.

§ 168.16 Impoundment and disposal of unauthorized livestock.

Unauthorized livestock within any range unit of the Hopi Partitioned Lands which are not removed therefrom within the periods prescribed by the regulation will be impounded and disposed of by the Superintendent as provided herein.

(a) When the Area Director determines that unauthorized livestock use is occurring and has definite knowledge of the kind of unauthorized livestock, and knows the name and address of the owners, such livestock may be impounded any time five days after written notice of intent to impound unauthorized livestock is mailed by certified mail or personally delivered to such owners or their agent.

(b) When the Area Director determines that unauthorized livestock use is occurring but does not have complete knowledge of the number and class of livestock or if the name and address of the owner thereof are unknown, such livestock will be impounded anytime 15 days after the date of a General Notice of Intent to Impound unauthorized livestock is first published in the local newspaper, posted at the nearest chapter house, and in one or more local trading posts.

(c) Unauthorized livestock on the Hopi Partitioned Lands which are owned by persons given notice under paragraph (a) of this section, and any unauthorized livestock in areas for which a notice has been posted and published under paragraph (b) of this section, will be impounded without further notice anytime within the twelve-month period immediately following the effective date of the notice.

(d) Following the impoundment of unauthorized livestock a notice of sale of impounded livestock will be published in the local newspaper, posted at the nearest chapter house, and in one or more local trading posts. The notice will describe the livestock and specify the date, time and place of sale. The date set shall be at least 5 days after the publication and posting of such notice.

(e) The owners or their agent may redeem the livestock anytime before the time set for the sale by submitting

proof of ownership and paying for all expenses incurred in gathering, impounding and feeding or pasturing the livestock and any trespass fees and/or damages caused by the animals.

(f) Livestock erroneously impounded shall be returned to the rightful owner and all expenses accruing thereto shall be waived.

(g) If the livestock are not redeemed before the time fixed for their sale, they shall be sold at public sale to the highest bidder, provided his bid is at or above the minimum amount set by the Superintendent based upon U.S.D.A.'s current Agricultural Statistic's Report for Arizona. If a bid at or above the minimum is not received the livestock may be sold at private sale at or above the minimum amount, reoffered at public sale, condemned and destroyed, or otherwise disposed of. When livestock are sold pursuant to this regulation, the superintendent shall furnish the buyer a bill of sale or other written instrument evidencing the sale.

(h) The proceeds of any sale of impounded livestock shall be applied as follows:

(1) To the payment of all expenses incurred by the United States in gathering, impounding, and feeding or pasturing the livestock;

(2) In payment of any penalties or damages assessed pursuant to §168.14 of this part which penalties or damages shall be credited to the Hopi tribe as provided in said section;

(3) Any remaining amount shall be paid over to the owner of said livestock upon his submitting proof of ownership.

Any proceeds remaining after payment of the first and second items noted above not claimed with one year from the date of sale, will be credited to the Hopi Tribe.

§168.17 Concurrence procedures.

(a) *Definitions.* As used in this section, terms shall have the meaning set forth as follows:

(1) ''Concurrence'' means agreement by the Area Director and the Hopi Tribe, speaking through the Chairman of the Tribe (or his designee).

(2) ''Non-concurrence'' means disagreement between the Area Director and the Hopi Tribe, speaking through the Chairman of the Hopi Tribe (or his designee), or a failure of the Hopi Tribe to respond to a proposal by the Area Director in a timely manner.

(3) ''Timely manner'' means a period of thirty days, unless this period is shortened by the existence of an emergency. Upon request by the Tribal Council, the Area Director may extend the 30 day period. In instances where this period applies to the Area Director, he may extend the period by so notifying the Tribe.

(4) ''An emergency'' is a condition that the Area Director finds threatens the rights and property of life tenants and persons awaiting relocation or one that the Area Director finds is causing the condition of the range land to deteriorate.

(5) ''Conservation practice'' is a program consisting of a series of acts in conformance with the Bureau's range management policies and procedures which maintains or seeks to achieve the grazing potential of range lands on a continuing basis.

(6) ''Range restoration activities'' is a program consisting of a series of range management acts, including but not limited to procedures which increase range forage production, reduce erosion, improve range usability and reduce stocking by issuing grazing permits to persons residing on Hopi partitioned lands at rates which maximize the carrying capacity of the range lands on a continuing basis.

(7) ''Grazing control'' is a program consisting of a series of range management acts, including but not limited to procedures by which grazing permits are issued to persons residing on Hopi partitioned lands, which limit the grazing on range lands to its carrying capacity.

(b) The Area Director will seek the participation of the Hopi Tribe in his investigation, formulation and planning of conservation practices for Hopi partitioned lands. The Area Director will submit, in writing, the proposed plan to the Hopi Tribe.

(c) Upon receipt of the Area Director's proposed conservation practices, the Hopi Tribe will deliver, in writing, to the Area Director its concurrence or non-concurrence on all of the proposed conservation practices in a timely

manner. The Area Director will continue to seek Hopi Tribal participation during the review process.

(d) Concurrence of the Hopi Tribe will be sought on all conservation practices, range restoration activities, and grazing control programs on the Hopi Partitioned Lands.

(1) If the Area Director and the Hopi Tribe concur on all or part of the proposed conservation practices in writing in a timely manner, those practices concurred upon may be immediately implemented.

(2) If the Hopi Tribe does not concur on all or part of the proposed conservation practices in a timely manner, the Area Director will submit in writing to the Hopi Tribe a declaration of non-concurrence. The Area Director will then notify the Hopi Tribe in writing of a formal hearing to be held not sooner than 15 days from the date of the non-concurrence declaration.

(i) The formal hearing on non-concurrence will permit the submission of written evidence and argument concerning the proposal. Minutes of the hearing will be taken. Following the hearing, the Area Director may amend, alter or otherwise change his proposed conservation practices. Except as provided in § 168.17(d)(1) of this section, if following the hearing, the Area Director altered or amends portions of his proposed plan of action, he will submit those individual altered or amended portions of the plan to the Tribe in a timely manner for their concurrence.

(ii) In the event the Tribe fails or refuses to give its concurrence to the proposal at the hearing, then the implementation of such proposal may only be undertaken in those situations where the Area Director expressly determines in a written order, based upon findings of fact, that the proposed action is necessary to protect the rights and property of life tenants and/or persons awaiting relocation.

§ 168.18 Appeals.

Appeals from decisions issued under this part will be in accordance with procedures in 25 CFR part 2.

§ 168.19 Information collection.

The information collection requirement(s) contained in this regulation have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1076–0027. The information is being collected in order to ascertain eligibility for the issuance of a grazing permit. Response is mandatory in order to obtain a permit.

PART 169—RIGHTS-OF-WAY OVER INDIAN LANDS

Sec.

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AUTHORITY: 5 U.S.C. 301; 62 Stat. 17 (25 U.S.C. 323—328), and other acts cited in the text.

SOURCE: 33 FR 19803, Dec. 27, 1968, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 169.1 Definitions.

As used in this part 169:

(a) ''Secretary'' means the Secretary of the Interior or his authorized representative acting under delegated authority. Before proceeding under these regulations anyone desiring a right-of-

way should inquire at the Indian Agency, Area Field Office, or other office of the Bureau of Indian Affairs having immediate supervision over the lands involved to determine the identity of the authorized representative of the Secretary for the purposes of this part 169.

(b) ''Individually owned land'' means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

(c) ''Tribe'' means a tribe, band, nation, community, group or pueblo of Indians.

(d) ''Tribal land'' means land or any interest therein, title to which is held by the United States in trust for a tribe, or title to which is held by any tribe subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

(e) ''Government owned land'' means land owned by the United States and under the jurisdiction of the Secretary which was acquired or set aside for the use and benefit of Indians and not included in the definitions set out in paragraphs (b) and (d) of this section.

§169.2 Purpose and scope of regulations.

(a) Except as otherwise provided in §1.2 of this chapter, the regulations in this part 169 prescribe the procedures, terms and conditions under which rights-of-way over and across tribal land, individually owned land and Government owned land may be granted.

(b) Appeals from administrative action taken under the regulations in this part 169 shall be made in accordance with part 2 of this chapter.

(c) The regulations contained in this part 169 do not cover the granting of rights-of-way upon tribal lands within a reservation for the purpose of constructing, operating, or maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other works which shall constitute a part of any project for which a license is required by the Federal Power Act. The Federal Power Act provides that any license which shall be issued to use tribal lands within a reservation shall be subject to and contain such conditions as the Secretary of the Interior shall deem necessary for the adequate protection and utilization of such lands. (16 U.S.C. 797(e)). In the case of tribal lands belonging to a tribe organized under the Act of June 18, 1934 (48 Stat. 984), the Federal Power Act requires that annual charges for the use of such tribal lands under any license issued by the Federal Power Commission shall be subject to the approval of the tribe (16 U.S.C. 803(e)).

§169.3 Consent of landowners to grants of right-of-way.

(a) No right-of-way shall be granted over and across any tribal land, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the tribe.

(b) Except as provided in paragraph (c) of this section, no right-of-way shall be granted over and across any individually owned lands, nor shall any permission to survey be issued with respect to any such lands, without the prior written consent of the owner or owners of such lands and the approval of the Secretary.

(c) The Secretary may issue permission to survey with respect to, and he may grant rights-of-way over and across individually owned lands without the consent of the individual Indian owners when

(1) The individual owner of the land or of an interest therein is a minor or a person non compos mentis, and the Secretary finds that such grant will cause no substantial injury to the land or the owner, which cannot be adequately compensated for by monetary damages;

(2) The land is owned by more than one person, and the owners or owner of a majority of the interests therein consent to the grant;

(3) The whereabouts of the owner of the land or an interest therein are unknown, and the owners or owner of any interests therein whose whereabouts

are known, or a majority thereof, consent to the grant;

(4) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the grant will cause no substantial injury to the land or any owner thereof;

(5) The owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof.

[36 FR 14183, July 31, 1971. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 169.4 Permission to survey.

Anyone desiring to obtain permission to survey for a right-of-way across individually owned, tribal or Government owned land must file a written application therefor with the Secretary. The application shall adequately describe the proposed project, including the purpose and general location, and it shall be accompanied by the written consents required by § 169.3, by satisfactory evidence of the good faith and financial responsibility of the applicant, and by a check or money order of sufficient amount to cover twice the estimated damages which may be sustained as a result of the survey. With the approval of the Secretary, a surety bond may be substituted in lieu of a check or money order accompanying an application, provided the company issuing the surety bond is licensed to do business in the State where the land to be surveyed is located. The application shall contain an agreement to indemnify the United States, the owners of the land, and occupants of the land, against liability for loss of life, personal injury and property damage occurring because of survey activities and caused by the applicant, his employees, contractors and their employees, or subcontractors and their employees. When the applicant is an agency or instrumentality of the Federal or a State Government and is prohibited by law from depositing estimated damages in advance or agreeing to indemnification, the requirement for such a deposit and indemnification may be waived providing the applicant agrees in writing to pay damages promptly when they are sustained. An application filed by a corporation must be accompanied by a copy of its charter or articles of incorporation duly certified by the proper State official of the State where the corporation was organized, and a certified copy of the resolution or bylaws of the corporation authorizing the filing of the application. When the land covered by the application is located in a State other than that in which the application was incorporated, it must also submit a certificate of the proper State official that the applicant is authorized to do business in the State where the land is located. An application filed by an unincorporated partnership or association must be accompanied by a certified copy of the articles of partnership or association, or if there be none, this fact must be stated over the signature of each member of the partnership or association. If the applicant has previously filed with the Secretary an application accompanied by the evidence required in this section, a reference to the date and place of such filing, accompanied by proof of current financial responsibility and good faith, will be sufficient. Upon receipt of an application made in compliance with the regulations of this part 169, the Secretary may grant the applicant written permission to survey.

§ 169.5 Application for right-of-way.

Written application identifying the specific use requested shall be filed in duplicate with the Secretary. The application shall cite the statute or statutes under which it is filed and the width and length of the desired right-of-way, and shall be accompanied by satisfactory evidence of the good faith and financial responsibility of the applicant. An application filed by a corporation must be accompanied by a copy of its charter or articles of incorporation duly certified by the proper State official of the State where the corporation was organized, and a certified copy of the resolution or bylaws of the corporation authorizing the filing of the application. When the land covered by the application is located in a State other than that in which the applicant was incorporated, it must

also submit a certificate of the proper State official that the applicant is authorized to do business in the State where the land is located. An application filed by an unincorporated partnership or association must be accompanied be a certified copy of the articles of partnership or association, or if there be none, this fact must be stated over the signature of each member of the partnership or association. If the applicant has previously filed with the Secretary an application accompanied by the evidence required by this section, a reference to the date and place of such filing will be sufficient. Except as otherwise provided in this section, the application shall be accompanied by a duly executed stipulation, in duplicate, expressly agreeing to the following:

(a) To construct and maintain the right-of-way in a workmanlike manner.

(b) To pay promptly all damages and compensation, in addition to the deposit made pursuant to §169.4, determined by the Secretary to be due the landowners and authorized users and occupants of the land on account of the survey, granting, construction and maintenance of the right-of-way.

(c) To indemnify the landowners and authorized users and occupants against any liability for loss of life, personal injury and property damage arising from the construction, maintenance, occupancy or use of the lands by the applicant, his employees, contractors and their employees, or subcontractors and their employees.

(d) To restore the lands as nearly as may be possible to their original condition upon the completion of construction to the extent compatible with the purpose for which the right-of-way was granted.

(e) To clear and keep clear the lands within the right-of-way to the extent compatible with the purpose of the right-of-way; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project.

(f) To take soil and resource conservation and protection measures, including weed control, on the land covered by the right-of-way.

(g) To do everything reasonably within its power to prevent and suppress fires on or near the lands to be occupied under the right-of-way.

(h) To build and repair such roads, fences, and trails as may be destroyed or injured by construction work and to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(i) That upon revocation or termination of the right-of-way, the applicant shall, so far as is reasonably possible, restore the land to its original condition.

(j) To at all times keep the Secretary informed of its address, and in case of corporations, of the address of its principal place of business and of the names and addresses of its principal officers.

(k) That the applicant will not interfere with the use of the lands by or under the authority of the landowners for any purpose not inconsistent with the primary purpose for which the right-of-way is granted.

When the applicant is the U.S. Government or a State Government or an instrumentality thereof and is prohibited by law from executing any of the above stipulations, the Secretary may waive the requirement that the applicant agree to any stipulations so prohibited.

[33 FR 19803, Dec. 27, 1968, as amended at 45 FR 45910, July 8, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

§169.6 Maps.

(a) Each application for a right-of-way shall be accompanied by maps of definite location consisting of an original on tracing linen or other permanent and reproducible material and two reproductions thereof. The field notes shall accompany the application, as provided in §169.7. The width of the right-of-way shall be clearly shown on the maps.

(b) A separate map shall be filed for each section of 20 miles of right-of-way, but the map of the last section may include any excess of 10 miles or less.

(c) The scale of maps showing the line of route normally should be 2,000 feet to an inch. The maps may, however, be drawn to a larger scale when

necessary and when an increase in scale cannot be avoided through the use of separate field notes, but the scale must not be increased to such extent as to make the maps too cumbersome for convenient handling and filing.

(d) The maps shall show the allotment number of each tract of allotted land, and shall clearly designate each tract of tribal land affected, together with the sections, townships, and ranges in which the lands crossed by the right-of-way are situated.

§ 169.7 Field notes.

Field notes of the survey shall appear along the line indicating the right-of-way on the maps, unless the maps would be too crowded thereby to be easily legible, in which event the field notes may be filed separately on tracing linen in such form that they may be folded readily for filing. Where field notes are placed on separate tracing linen, it will be necessary to place on the maps only a sufficient number of station numbers so as to make it convenient to follow the field notes. The field notes shall be typewritten. Whether endorsed on the maps or filed separately, the field notes shall be sufficiently complete so as to permit the line indicating the right-of-way to be readily retraced on the ground from the notes. They shall show whether the line was run on true or magnetic bearings, and, in the latter case, the variation of the needle and date of determination must be stated. One or more bearings (or angular connections with public survey lines) must be given. The 10-mile sections must be indicated and numbered on all lines of road submitted.

§ 169.8 Public survey.

(a) The terminal of the line of route shall be fixed by reference of course and distance to the nearest existing corner of the public survey. The maps, as well as the engineer's affidavit and the certificate, shall show these connections.

(b) When either terminal of the line of route is upon unsurveyed land, it must be connected by traverse with an established corner of the public survey if not more than 6 miles distant from it, and the single bearing and distance from the terminal point to the corner computed and noted on the maps, in the engineer's affidavit, and in the certificate. The notes and all data for the computation of the traverse must be given.

§ 169.9 Connection with natural objects.

When the distance to an established corner of the public survey is more than 6 miles, this connection will be made with a natural object or a permanent monument which can be readily found and recognized, and which will fix and perpetuate the position of the terminal point. The maps must show the position of such mark, and course and distance to the terminus. There must be given an accurate description of the mark and full data concerning the traverse, and the engineer's affidavit and the certificate on the maps must state the connections.

§ 169.10 Township and section lines.

Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner shall be noted. The maps shall show these distances and the station numbers at the points of intersections. The field notes shall show these distances and the station numbers.

§ 169.11 Affidavit and certificate.

(a) There shall be subscribed on the maps of definite location an affidavit executed by the engineer who made the survey and a certificate executed by the applicant, both certifying to the accuracy of the survey and maps and both designating by termini and length in miles and decimals, the line of route for which the right-of-way application is made.

(b) Maps covering roads built by the Bureau of Indian Affairs which are to be transferred to a county or State government shall contain an affidavit as to the accuracy of the survey, executed by the Bureau highway engineer in charge of road construction, and a certificate by the State or county engineer or other authorized State or county officer accepting the right-of-way and stating that he is satisfied as to the accuracy of the survey and maps.

§169.12 Consideration for right-of-way grants.

Except when waived in writing by the landowners or their representatives as defined in §169.3 and approved by the Secretary, the consideration for any right-of-way granted or renewed under this part 169 shall be not less than but not limited to the fair market value of the rights granted, plus severance damages, if any, to the remaining estate. The Secretary shall obtain and advise the landowners of the appraisal information to assist them (the landowner or landowners) in negotiations for a right-of-way or renewal.

[45 FR 45910, July 8, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

§169.13 Other damages.

In addition to the consideration for a grant of right-of-way provided for by the provisions of §169.12, the applicant for a right-of-way will be required to pay all damages incident to the survey of the right-of-way or incident to the construction or maintenance of the facility for which the right-of-way is granted.

§169.14 Deposit and disbursement of consideration and damages.

At the time of filing an application for right-of-way, the applicant must deposit with the Secretary the total estimated consideration and damages, which shall include consideration for the right-of-way, severance damages, damages caused during the survey, and estimated damages to result from construction less any deposit previously made under §169.4. In no case shall the amount deposited as consideration for the right-of-way over any parcel be less than the amount specified in the consent covering that parcel. If in reviewing the application, the Secretary determines that the amounts deposited are inadequate to compensate the owners, the applicant shall increase the deposit to an amount determined by the Secretary to be adequate. The amounts so deposited shall be held in a ''special deposit'' account for distribution to or for the account of the landowners and authorized users and occupants of the land. Amounts deposited to cover damages resulting from survey and construction may be disbursed after the damages have been sustained. Amounts deposited to cover consideration for the right-of-way and severance damages shall be disbursed upon the granting of the right-of-way. Any part of the deposit which is not required for disbursement as aforesaid shall be refunded to the applicant promptly following receipt of the affidavit of completion of construction filed pursuant to §169.16.

§169.15 Action on application.

Upon satisfactory compliance with the regulations in this part 169, the Secretary is authorized to grant the right-of-way by issuance of a conveyance instrument in the form approved by the Secretary. Such instrument shall incorporate all conditions or restrictions set out in the consents obtained pursuant to §169.3. A copy of such instrument shall be promptly delivered to the applicant and thereafter the applicant may proceed with the construction work. Maps of definite location may be attached to and incorporated into the conveyance document by reference. In the discretion of the Secretary, one conveyance document may be issued covering all of the tracts of land traversed by the right-of-way, or separate conveyances may be made covering one or several tracts included in the application. A duplicate original copy of the conveyance instrument, permanent and reproducible maps, a copy of the application and stipulations, together with any other pertinent documents shall be transmitted by the Secretary to the office of record for land documents affecting the land covered by the right-of-way, where they will be recorded and filed.

§169.16 Affidavit of completion.

Upon the completion of the construction of any right-of-way, the applicant shall promptly file with the Secretary an affidavit of completion, in duplicate, executed by the engineer and certified by the applicant. The Secretary shall transmit one copy of the affidavit to the office of record mentioned in §169.15. Failure to file an affidavit in accordance with this section shall subject the right-of-way to cancellation in accordance with §169.20.

§ 169.17 Change of location.

If any change from the location described in the conveyance instrument is found to be necessary on account of engineering difficulties or otherwise, amended maps and field notes of the new location shall be filed, and a right-of-way for such new route or location shall be subject to consent, approval, the ascertainment of damages, and the payment thereof, in all respects as in the case of the original location. Before a revised conveyance instrument is issued, the applicant shall execute such instruments deemed necessary by the Secretary extinguishing the right-of-way at the original location. Such instruments shall be transmitted by the Secretary to the office of record mentioned in § 169.15 for recording and filing.

§ 169.18 Tenure of approved right-of-way grants.

All rights-of-way granted under the regulations in this part 169 shall be in the nature of easements for the periods stated in the conveyance instrument. Except as otherwise determined by the Secretary and stated in the conveyance instrument, rights-of-way granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), for railroads, telephone lines, telegraph lines, public roads and highways, access roads to homesite properties, public sanitary and storm sewer lines including sewage disposal and treatment plants, water control and use projects (including but not limited to dams, reservoirs, flowage easements, ditches, and canals), oil, gas, and public utility water pipelines (including pumping stations and appurtenant facilities), electric power projects, generating plants, switchyards, electric transmission and distribution lines (including poles, towers, and appurtenant facilities), and for service roads and trails essential to any of the aforestated use purposes, may be without limitation as to term of years; whereas, rights-of-way for all other purposes shall be for a period of not to exceed 50 years, as determined by the Secretary and stated in the conveyance instrument.

[37 FR 12937, June 30, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 169.19 Renewal of right-of-way grants.

On or before the expiration date of any right-of-way heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant. If the renewal involves no change in the location or status of the original right-of-way grant, the applicant may file with his application a certificate under oath setting out this fact, and the Secretary, with the consent required by § 169.3, may thereupon extend the grant for a like term of years, upon the payment of consideration as set forth in § 169.12. If any change in the size, type, or location of the right-of-way is involved, the application for renewal shall be treated and handled as in the case of an original application for a right-of-way.

§ 169.20 Termination of right-of-way grants.

All rights-of-way granted under the regulations in this part may be terminated in whole or in part upon 30 days written notice from the Secretary mailed to the grantee at its latest address furnished in accordance with § 169.5(j) for any of the following causes:

(a) Failure to comply with any term or condition of the grant or the applicable regulations;

(b) A nonuse of the right-of-way for a consecutive 2-year period for the purpose for which it was granted;

(c) An abandonment of the right-of-way.

If within the 30-day notice period the grantee fails to correct the basis for termination, the Secretary shall issue an appropriate instrument terminating the right-of-way. Such instrument shall be transmitted by the Secretary to the office of record mentioned in § 169.15 for recording and filing.

[33 FR 19803, Dec. 27, 1968, as amended at 45 FR 45910, July 8, 1980. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 169.21 Condemnation actions involving individually owned lands.

The facts relating to any condemnation action to obtain a right-of-way over individually owned lands shall be reported immediately by officials of

the Bureau of Indian Affairs having knowledge of such facts to appropriate officials of the Interior Department so that action may be taken to safeguard the interests of the Indians.

§ 169.22 Service lines.

(a) An agreement shall be executed by and between the landowner or a legally authorized occupant or user of individually owned land and the applicant before any work by the applicant may be undertaken to construct a service line across such land. Such a service line shall be limited in the case of power lines to a voltage of 14.5 kv. or less except lines to serve irrigation pumps and commercial and industrial uses which shall be limited to a voltage not to exceed 34.5 kv. A service line shall be for the sole purpose of supplying the individual owner or authorized occupant or user of land, including schools and churches, with telephone, water, electric power, gas, and other utilities for use by such owner, occupant, or user of the land on the premises.

(b) A similar agreement to that required in paragraph (a) of this section shall be executed by the tribe or legally authorized occupant or user of tribal land and the applicant before any work by the applicant may be undertaken for the construction of a service line across tribal land. A service line shall be for the sole purpose of supplying an occupant or user of tribal land with any of the utilities specified in paragraph (a) of this section. No agreement under this paragraph shall be valid unless its execution shall have been duly authorized in advance of construction by the governing body of the Indian tribe whose land is affected, unless the contract under which the occupant or user of the land obtained his rights specifically authorizes such occupant or user to enter into service agreements for utilities without further tribal consent.

(c) In order to encourage the use of telephone, water, electric power, gas and other utilities and to facilitate the extension of these modern conveniences to sparsely settled Indian areas without undue costs the agreement referred to in paragraph (a) of this section shall only be required to include or have appended thereto, a plat or diagram showing with particularity the location, size, and extent of the line. When the plat or diagram is placed on a separate sheet it shall bear the signature of the parties. In case of tribal land, the agreement shall be accompanied by a certified copy of the tribal authorization when required.

(d) An executed copy of the agreement, together with a plat or diagram, and in the case of tribal land, an authenticated copy of the tribal authorization, when required, shall be filed with the Secretary within 30 days after the date of its execution. Failure to meet this requirement may result in the removal of improvements placed on the land at the expense of the party responsible for the placing of such improvements and subject such party to the payment of damages caused by his unauthorized act.

§ 169.23 Railroads.

(a) The Act of March 2, 1899 (30 Stat. 990), as amended by the Acts of February 28, 1902 (32 Stat. 50), June 21, 1906 (34 Stat. 330), and June 25, 1910 (36 Stat. 859; 25 U.S.C. 312—318); the Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934); and the Act of March 3, 1909 (35 Stat. 781), as amended by the Act of May 6, 1910 (36 Stat. 349; 25 U.S.C. 320), authorize grants of rights-of-way across tribal, individually owned and Government-owned land, except in the State of Oklahoma, for railroads, station buildings, depots, machine shops, side tracks, turnouts, and water stations; for reservoirs, material or ballast pits needed to the construction, repair, and maintenance of railroads; and for the planting and growing of trees to protect railroad lines. Rights-of-way granted under the above acts shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way for the above purposes granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) Rights-of-way for railroads shall not exceed 50 feet in width on each side of the centerline of the road, except where there are heavy cuts and fills,

when they shall not exceed 100 feet in width on each side of the road. The right-of-way may include grounds adjacent to the line for station buildings, depots, machine shops, side tracks, turnouts, and water stations, not to exceed 200 feet in width by a length of 3,000 feet, with no more than one station to be located within any one continuous length of 10 miles of road.

(c) Short spurs and branch lines may be shown on the map of the main line, separately described by termini and length. Longer spurs and branch lines shall be shown on separate maps. Grounds desired for station purposes may be indicated on the map of definite location but separate plats must be filed for such grounds. The maps shall show any other line crossed, or with which connection is made. The station number shall be shown on the survey thereof at the point of intersection. All intersecting roads must be represented in ink of a different color from that used for the line for which application is made.

(d) Plats of railroad station grounds shall be drawn on a scale of 400 feet to an inch, and must be filed separately from the line of route. Such plats shall show enough of the line of route to indicate the position of the tract with reference thereto. Each station ground tract must be located with respect to the public survey as provided in § 169.8 and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(e) If any proposed railroad is parallel to, and within 10 miles of, a railroad already built or in course of construction, it must be shown wherein the public interest will be promoted by the proposed road. Where the Interstate Commerce Commission has passed on this point, a certified copy of its findings must be filed with the application.

(f) The applicant must certify that the road is to be operated as a common carrier of passengers and freight.

(g) The applicant shall execute and file, in duplicate, a stipulation obligating the company to use all precautions possible to prevent forest fires and to suppress such fires when they occur, to construct and maintain passenger and freight stations for each Government townsite, and to permit the crossing, in a manner satisfactory to the Government officials in charge, of the right-of-way by canals, ditches, and other projects.

(h) A railroad company may apply for sufficient land for ballast or material pits, reservoirs, or tree planting to aid in the construction or maintenance of the road. The authority to use any land for such purposes shall terminate upon abandonment or upon failure to use the land for such purposes for a continuous period of 2 years.

§ 169.24 Railroads in Oklahoma.

(a) The Act of February 28, 1902 (32 Stat. 43), authorizes right-of-way grants across tribal and individually owned land in Oklahoma. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, railroad rights-of-way in Oklahoma granted under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328), shall also be subject to the provisions of this section.

(b) One copy on tracing linen of the map of definite location showing the line of route and all lands included within the right-of-way must be filed with the Secretary. When tribal lands are involved, a copy of the map must also be filed with the tribal council.

(c) Before any railroad may be constructed or any lands taken or condemned for any of the purposes set forth in section 13 of the Act of February 28, 1902 (32 Stat. 47), full damages shall be paid to the Indian owners.

(d) After the maps have been filed, the matter of damages shall be negotiated by the applicant directly with the Indian owners. If an amicable settlement cannot be reached, the amount to be paid as compensation and damages shall be fixed and determined as provided in the statute. If court proceedings are instituted, the facts shall be reported immediately as provided in § 169.21.

§ 169.25 Oil and gas pipelines.

(a) The Act of March 11, 1904 (33 Stat. 65), as amended by the Act of March 2,

1917 (39 Stat. 973; 25 U.S.C. 321), authorizes right-of-way grants for oil and gas pipelines across tribal, individually owned and Government-owned land. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323-328) shall also be subject to the provisions of this section.

(b) Rights-of-way, granted under aforesaid Act of March 11, 1904, as amended, for oil and gas pipelines, pumping stations or tank sites shall not extend beyond a term of 20 years and may be extended for another period of not to exceed 20 years following the procedures set out in §169.19 of this part.

(c) All oil or gas pipelines, including connecting lines, shall be buried a sufficient depth below the surface of the land so as not to interfere with cultivation. Whenever the line is laid under a road or highway, the right-of-way for which has been granted under an approved application pursuant to an act of Congress, its construction shall be in compliance with the applicable Federal and State laws; during the period of construction, at least one-half the width of the road shall be kept open to travel; and, upon completion, the road or highway shall be restored to its original condition and all excavations shall be refilled. Whenever the line crosses a ravine, canyon, or waterway, it shall be laid below the bed thereof or upon such superstructure as will not interfere with the use of the surface.

(d) The size of the proposed pipeline must be shown in the application, on the maps, and in the engineer's affidavit and applicant's certificate. The application and maps shall specify whether the pipe is welded, screw-joint, dresser, or other type of coupling. Should the grantee of an approved right-of-way desire at any time to lay additional line or lines of pipe in the same trench, or to replace the original line with larger or smaller pipe, written permission must first be obtained from the Secretary and all damages to be sustained by the owners must be paid in advance in the amount fixed and determined by the Secretary.

(e) Applicants for oil or gas pipeline rights-of-way may apply for additional land for pumping stations or tank sites. The maps shall show clearly the location of all structures and the location of all lines connecting with the main line. Applicants for lands for pumping stations or tank sites shall execute and file a stipulation agreeing as follows:

(1) Upon abandonment of the right-of-way to level all dikes, fire-guards, and excavations and to remove all concrete masonry foundations, bases, and structural works and to restore the land as nearly as may be possible to its original condition.

(2) That a grant for pumping station or tank site purposes shall be subservient to the owner's right to remove or authorize the removal of oil, gas, or other mineral deposits; and that the structures for pumping station or tank site will be removed or relocated if necessary to avoid interference with the exploration for or recovery of oil, gas, or other minerals.

(f) Purely lateral lines connecting with oil or gas wells on restricted lands may be constructed upon filing with the Secretary a copy of the written consent of the Indian owners and a blueprint copy of a map showing the location of the lateral. Such lateral lines may be of any diameter or length, but must be limited to those used solely for the transportation of oil or gas from a single tract of tribal or individually owned land to another lateral or to a branch of the main line.

(g) The applicant, by accepting a pipeline right-of-way, thereby agrees that the books and records of the applicant shall be open to inspection by the Secretary at all reasonable times, in order to obtain information pertaining in any way to oil or gas produced from tribal or individually owned lands or other lands under the jurisdiction of the Secretary.

§169.26 Telephone and telegraph lines; radio, television, and other communications facilities.

(a) The Act of February 15, 1901 (31 Stat. 790), as amended by the Act of March 4, 1940 (54 Stat. 41; 43 U.S.C. 959);

the Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961); and the Act of March 3, 1901 (31 Stat. 1083; 25 U.S.C. 319), authorize right-of-way grants across tribal, individually owned, and Government-owned land for telephone and telegraph lines and offices, for poles and lines for communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities. Rights-of-way granted under these acts shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323—328), shall also be subject to the provisions of this section.

(b) A right-of-way granted under the said Act of March 4, 1911, as amended, shall be limited to a term not exceeding 50 years from the date of the issuance of such grant.

(c) No right-of-way shall be granted for a width in excess of 50 feet on each side of the centerline, unless special requirements are clearly set forth in the application which fully justify a width in excess of 50 feet on each side of the centerline.

(d) Applicants engaged in the general telephone and telegraph business may apply for additional land for office sites. The maps showing the location of proposed office sites shall be filed separately from those showing the line of route, and shall be drawn to a scale of 50 feet to an inch. Such maps shall show enough of the line of route to indicate the position of the tract with reference thereto. The tract shall be located with respect to the public survey as provided in § 169.8, and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

(e) Rights-of-way for poles and lines for communication purposes, and for radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities, shall be limited to 200 feet on each side of the centerline of such lines and poles; radio and television, and other forms of communication transmitting, relay, and receiving structures and facilities shall be limited to an area not to exceed 400 feet by 400 feet.

§ 169.27 Power projects.

(a) The Act of March 4, 1911 (36 Stat. 1253), as amended by the Act of May 27, 1952 (66 Stat. 95; 43 U.S.C. 961), authorizes right-of-way grants across tribal, individually owned and Government-owned land for electrical poles and lines for the transmission and distribution of electrical power. Rights-of-way granted under that act shall be subject to the provisions of this section as well as other pertinent sections of this part 169. Except when otherwise determined by the Secretary, rights-of-way granted for such purposes under the Act of February 5, 1948 (62 Stat. 17; 25 U.S.C. 323—328) shall also be subject to the provisions of this section.

(b) All applications, other than those made by power-marketing agencies of the Department of the Interior, for authority to survey, locate, or commence construction work on any project for the generation of electric power, or the transmission or distribution of electrical power of 66 kV or higher involving Government-owned lands shall be referred to the Office of the Assistant Secretary of the Interior for Water and Power Resources or such other agency as may be designated for the area involved, for consideration of the relationship of the proposed project to the power development program of the United States. Where the proposed project will not conflict with the program of the United States, the Secretary, upon notification to the effect, may then proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction, or utilization of the project in order to eliminate conflicts with the power development program of the United States, the Secretary shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application.

(c) A right-of-way granted under the said Act of March 4, 1911, as amended, shall be limited to a term not exceeding 50 years from the date of the issuance of such grant.

(d) Rights-of-way for power lines shall be limited to those widths which can be justified and in no event shall exceed a width of 200 feet on each side of the centerline.

(e) The applicant shall make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision, for avoiding inductive interference between any project transmission line or other project works constructed, operated, or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

(f) An applicant for a right-of-way for a transmission line across Government-owned lands having a voltage of 66 kV or more must, in addition to the stipulation required by § 169.5, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(1) The applicant agrees that, in the event it becomes necessary for the United States to acquire the applicant's transmission line or facilities constructed on or across such right-of-way, the United States reserves the right to acquire such line or facilities at a sum to be determined upon by a representative of the applicant, a representative of the Secretary of the Interior, and a third representative to be selected by the other two for the purpose of determining the value of such property thus to be acquired by the United States.

(2) To allow the Department of the Interior to utilize for the transmission of electrical power any surplus capacity of the line in excess of the capacity needed by the holder of the grant for the transmission of electrical power in connection with the applicant's operations, or to increase the capacity of the line at the Department's expense and to utilize the increased capacity for the transmission of electrical power. Utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(i) When the Department desires to utilize surplus capacity thought to exist in a line, notification will be given to the applicant and the applicant shall furnish to the Department within 30 days a certificate stating whether the line has any surplus capacity not needed by the applicant for the transmission of electrical power in connection with the applicant's operations, and, if so, the extent of such surplus capacity.

(ii) In order to utilize any surplus capacity certified by the applicant to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the applicant's line in a manner conformable to approved standards of practice for the interconnection of transmission circuits.

(iii) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate switching, relaying, and protective equipment so as to insure that the normal and efficient operation of the applicant's line will not be impaired.

(iv) After any interconnection is completed, the applicant shall operate and maintain its line in good condition; and, except in emergencies, shall maintain in a closed position all connections under the applicant's control between the applicant's line and the interconnecting facilities provided by the Department.

(v) The interconnected power systems of the Department and the applicant will be operated in parallel.

(vi) The transmission of electrical power by the Department over the applicant's line will be effected in such manner and quantity as will not interfere unreasonably with the applicant's use and operation of the line in accordance with the applicant's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the line which has been provided at the Department's expense.

(vii) The applicant will not be obligated to allow the transmission over

its line by the Department of electrical power to any person receiving service from the applicant on the date of the filing of the application for a grant, other than persons entitled to statutory preference in connection with the distribution and sale of electrical power by the Department.

(viii) The Department will pay to the applicant an equitable share of the total monthly cost of maintaining and operating the part of the applicant's line utilized by the Department for the transmission of electrical power, the payment to be an amount in dollars representing the same proportion of the total monthly operation and maintenance cost of such part of the line as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the applicant's line during the month bears to the total capacity in kilowatts of that part of the line. The total monthly cost may include interest and amortization, in accordance with the system of accounts prescribed by the Federal Power Commission, on the applicant's net total investment (exclusive of any investment by the Department) in the part of the line utilized by the Department.

(ix) If, at any time subsequent to a certification by the applicant that surplus capacity is available for utilization by the Department, the applicant needs for the transmission of electrical power in connection with its operations the whole or any part of the capacity of the line theretofore certified as being surplus to its needs, the applicant may modify or revoke the previous certification by giving the Secretary of the Interior 30 months' notice, in advance, of the applicant's intention in this respect. After the revocation of a certificate, the Department's utilization of the particular line will be limited to the increased capacity, if any, provided by the Department at its expense.

(x) If, during the existence of the grant, the applicant desires reciprocal accommodations for the transmission of electrical power over the interconnecting system of the Department to its line, such reciprocal accommodations will be accorded under terms and conditions similar to those prescribed in this paragraph with respect to the transmission by the Department of electrical power over the applicant's line.

(xi) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the applicant and the Secretary of the Interior or his designee.

(g) Applicants may apply for additional lands for generating plants and appurtenant facilities. The lands desired for such purposes may be indicated on the maps showing the definite location of the right-of-way, but separate maps must be filed therefor. Such maps shall show enough of the line of route to indicate the position of the tract with respect to said line. The tract shall be located with respect to the public survey as provided in § 169.8, and all buildings or other structures shall be platted on a scale sufficiently large to show clearly their dimensions and relative positions.

[33 FR 19803, Dec. 27, 1968, as amended at 38 FR 14680, June 4, 1973. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 169.28 Public highways.

(a) The appropriate State or local authorities may apply under the regulations in this part 169 for authority to open public highways across tribal and individually owned lands in accordance with State laws, as authorized by the Act of March 3, 1901 (31 Stat. 1084; 25 U.S.C. 311).

(b) In lieu of making application under the regulations in this part 169, the appropriate State or local authorities in Nebraska or Montana may, upon compliance with the requirements of the Act of March 4, 1915 (38 Stat. 1188), lay out and open public highways in accordance with the respective laws of those States. Under the provisions of that act, the applicant must serve the Secretary with notice of intention to open the proposed road and must submit a map of definite location on tracing linen showing the width of the proposed road for the approval of the Secretary prior to the laying out and opening of the road.

(c) Applications for public highway rights-of-way over and across roadless and wild areas shall be considered in

accordance with the regulations contained in part 265 of this chapter.

PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

CONSTRUCTION AND MAINTENANCE OF ROADS

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AUTHORITY: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e-2(i); 23 U.S.C. 101(a), 208, 308), unless otherwise noted.

SOURCE: Sections 170.1 to 170.9, 39 FR 27132, July 25, 1974, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

CONSTRUCTION AND MAINTENANCE OF ROADS

§170.1 Purpose.

The regulations in this part govern the planning, design, construction, maintenance and general administration of certain Indian reservation roads and bridges.

§170.2 Definitions.

As used in this part:

(a) ''Commissioner'' means the Commissioner of Indian Affairs.

(b) ''Superintendent'' means the Agency Superintendent at all locations, with the exception that at the Navajo Reservation this term shall mean the Area Director or his designated representative for public hearings on arterial roads which cross Agency boundaries of jurisdiction.

(c) ''State'' means a State or territory or political subdivision thereof.

(d) ''Indian Reservation Roads and Bridges'' means roads and bridges that are located within or provide access to an Indian reservation or Indian trust land or restricted Indian land which is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups or communities in which Indians and Alaskan Natives reside, whom the Commissioner has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians. (23 U.S.C. 101(a))

(e) ''Indian and Alaskan Native villages, groups, or communities in which Indian or Alaska Natives reside'' means villages, groups or communities or portions of villages, groups, or communities in which the majority of the residents are Indians or Alaska Natives.

(f) ''Federal-Aid Indian Road System'' means those Indian reservation roads and bridges for which financial aid for construction is available only from specific appropriations of Federal funds therefor and which are designated by the Bureau of Indian Affairs and the Federal Highway Administration. This term does not include roads or bridges on Indian reservations for which financial aid for construction and improvement is available to a State under the Federal-Aid Highway Act. (45 Stat. 750)

(g) ''Construction'' means supervising, inspecting, actual building, and all expenses incidental to the construction and improvement of roads and bridges including the elimination of roadway hazards and the acquisition of rights-of-way.

(h) ''Maintenance'' means the act of preserving the entire roadway, including surface, shoulders, roadsides, structures, and the necessary traffic control devices as nearly as possible in the as-built condition and to provide services for the satisfactory and safe use of such roads.

§ 170.3 Construction and improvement.

Subject to the availability of appropriations for Indian reservation roads and bridges and any other contribution of State or Indian tribal lands, the Commissioner shall plan, survey, design and construct roads on the Federal-Aid Indian Road System to provide an adequate system of road facilities serving Indian lands.

§ 170.4 Approval of road construction activities.

The Secretary of Transportation or his authorized representative shall approve the location, type, and design of all projects on the Federal-Aid Indian Road System before any construction expenditures are made. All such construction shall be under the general supervision of the Secretary of Transportation or his authorized representative.

(23 U.S.C. 208)

§ 170.4a Selection of road construction projects.

The Commissioner, who is responsible for the planning, surveys and design, shall keep the appropriate local tribal officials informed of all technical information relating to the project alternatives of proposed road developments. The Commissioner shall recommend to the tribe those proposed road projects having the greatest need as determined by the comprehensive transportation analysis. Tribes shall then establish annual priorities for road construction projects. Subject to the approval of the Commissioner, the annual selection of road projects for construction shall be performed by tribes. Funds available for the construction of roads on the Federal-Aid Indian Road System shall not be used for the capital improvement to privately-owned property. (39 Stat. 355)

§ 170.5 Right-of-way.

(a) The procedure for obtaining permission to survey and for granting any necessary right-of-way are governed by part 169 of this chapter. Tribal consent as required under § 169.3(a) may be made by public dedication where proper tribal authority exists. Before any work is undertaken for the construction of road projects, the Commissioner shall obtain the written consent of the Indian landowners. Where an Indian has an interest in tribal land by virtue of a land use assignment, such consent shall be obtained from both the landholder of the assignment and the Indian tribe. Right-of-way easements are to be on a form approved by the Commissioner.

(b) If it appears that the road might be transferred to the tribe, the county or the State within 10 years, then before such construction is undertaken, right-of-way easements for the project shall be obtained in favor of the United States, its successors and assigns, with the right to construct, maintain, and repair improvements thereon and thereover, for such purposes and with the further right in the United States, its successors and assigns, to transfer the right-of-way easements by assignment, grant or otherwise.

§ 170.5a Employment of Indians.

The Bureau of Indian Affairs road program shall be administered in such a way as to provide training and employment of Indians. The Commissioner may contract with tribes and Indian-owned construction companies, or the Commissioner may purchase materials, obtain equipment and employ Indian labor in the construction and maintenance of roads.

(36 Stat. 861; 78 Stat. 241, 253; 78 Stat. 257; 25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e-2(i); 23 U.S.C. 208(c))

§ 170.6 Maintenance of Indian roads.

The administration and maintenance of Indian reservation roads and bridges is basically a function of the local Government. Subject to the availability of funds, the Commissioner shall maintain, or cause to be maintained, those approved roads on the Federal-Aid Indian Road System. The Commissioner may also maintain roads not on the Federal-Aid Indian Road System if such roads meet the definition of ''Indian reservation road and bridges'' and are approved for maintenance by the Commissioner. No funds authorized under 23 U.S.C. 208 are available for the maintenance of roads.

§170.6a Contributions from tribes.

The Commissioner may enter into agreements with an Indian tribe for a contribution from its tribal funds for the construction or maintenance of roads governed by regulations of this part. However, the tribe must be able to make such contributions without undue impairment of the necessary tribal functions.

§170.7 Cooperation with States.

The Commissioner may enter into an agreement with the State for cooperation in the construction and the maintenance of certain Indian reservation roads and bridges, especially at those locations where road projects serve non-Indian land as well as Indian land.

(23 U.S.C. 208(d); 23 U.S.C.308(a))

§170.8 Use of roads.

(a) Free public use is required on roads eligible for construction and maintenance with Federal funds under this part. When required for public safety, fire prevention or suppression, or fish or game protection, or to prevent damage to unstable roadbed, the Commissioner may restrict the use of them or may close them to public use.

(b) The Commissioner shall conduct engineering and traffic analysis in accordance with established traffic engineering practices and determine the necessary maximum speed limit, maximum vehicular weight limit and other needed regulatory signs for roads which he maintains. The Commissioner shall make recommendations to local Government officials, who are authorized to enact and enforce ordinances on Indian lands, of his determination of the needed regulatory signs. Such regulatory signs as are authorized by established ordinances shall be erected by the Commissioner. At locations under the jurisdiction of the Court of Indian Offenses the Commissioner shall erect such regulatory signs as he determines are needed.

§170.9 Roadless and wild areas.

Roads passable to motor transportation shall not be constructed under the regulations in this part within the boundaries of the roadless and wild areas established in part 265 of this chapter.

PUBLIC HEARINGS ON ROAD PROJECTS

AUTHORITY: 45 Stat. 750; 25 U.S.C. 318a. Interpret or apply sec. 6, 49 Stat. 1521, as amended; 25 U.S.C. 318b.

SOURCE: Sections 170.10 to 170.19, 39 FR 12733, Apr. 8, 1974, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§170.10 Purpose and objectives.

The regulations in this subpart govern the calling and conducting of public hearings on Bureau of Indian Affairs road projects beginning with road projects scheduled to begin construction in Fiscal Year 1975, and thereafter. In order to promote coordination and comprehensive planning of construction activities on Indian reservations, the objectives for conducting public hearings on proposed road projects are to:

(a) Inform interested persons of the road proposals which affect them and allow such persons to express their views at those stages of a project's development when the flexibility to respond to these views still exists.

(b) Insure that road locations and designs are consistent with the reservations' objectives and with applicable Federal regulations.

§170.11 Criteria.

A public hearing shall be held for each project that:

(a) Is a new route being constructed,

(b) Would significantly change the layout or function of connecting or related roads or streets,

(c) Would have an adverse effect upon adjacent real property, or

(d) Is expected to be of a controversial nature.

§170.12 Need for public hearing determined.

The Superintendent will call a meeting of representatives from the tribe, the Bureau of Indian Affairs, and other appropriate agencies to determine for each road project if a public hearing is needed. The determination will be based on the criteria given in §170.11. More than one public hearing may be held for a project if necessary.

§ 170.13 Notice of road construction projects.

When no public hearing is scheduled for a road construction project, notice of the road construction project must be given at least 90 days before the date construction is scheduled to begin. Such notice should give the project name and location, the type of improvement planned, the date construction is scheduled to start, and the name and address of the office where more information can be obtained. The notice should be posted or published as determined by the Superintendent.

§ 170.14 Notice of public hearing.

Notice will be given to inform the local public of the scheduled hearing. The notice should give the date, time, and place of the scheduled hearing; the project location; the proposed work to be done; the place where the preliminary plans may be reviewed; and the place where more information on the project can be obtained. The notice should be posted or published as determined by the Superintendent. Notice should be given at least 15 days before the scheduled date of the public hearing and again, at least 5 days before the hearing date.

§ 170.15 Record of hearing proceedings.

A record of the hearing shall be made. The record shall include written statements submitted at the hearing or within 5 days following the hearing.

§ 170.16 Conducting the public hearing.

(a) The Superintendent will appoint a tribal or Bureau of Indian Affairs official to preside at the public hearing and to maintain a medium for free and open discussion designed to reach early and amicable resolution of issues.

(b) The Superintendent shall be responsible for maintaining a record of the hearing and shall make arrangements for appropriate officials to be present at the hearing to be responsive to questions which may arise.

(c) The purpose of the hearing and an agenda of items to be discussed should be presented at the beginning of the hearing. It should be made clear at the hearing that the tribal chairman or his designated roads committee are the officials responsible for setting reservation road priorities and considering the merits of one road project over another. Sufficient maps and project plans will be available at the hearing for public review. The hearing audience should be informed of the Bureau's road construction and right-of-way acquisition procedures on reservations. If the project will require relocating residences or businesses, information on relocation services and authorized payments will be given.

§ 170.17 Written statements.

Written statements may be submitted as well as oral statements made at the public hearing. Written statements may also be submitted during the 5 days following the hearing.

§ 170.18 Hearing statement.

If significant issues develop at the public hearing which remain unresolved, the Superintendent will issue a hearing statement summarizing the results of the public hearing and his determination as to the further action to be taken in connection with the proposed project. The hearing statement shall be issued within 20 days of the date of the public hearing. The hearing statement will be posted at the place where the hearing was held, and shall be sent to interested persons upon request. The hearing statement will outline procedures whereby the determination may be appealed.

§ 170.19 Appeals.

Any determination concerning the proposed road project may be appealed in accordance with the procedures set forth in part 2 of this title.

PART 171—OPERATION AND MAINTENANCE

Sec.

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AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. Sec. 171.4(b) also issued under 34 Stat. 1024, 38 Stat. 583, and 68 Stat. 1026. Secs. 171.4(a), 171.4(c), 171.16(b), and 171.17(f) also issued under sec. 11, 39 Stat. 142.

SOURCE: 42 FR 30362, June 14, 1977, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 171.1 Administration.

(a) The Agency Superintendent, Project Engineer or such official as authorized by the Area Director is the Officer-in-Charge of those Indian Irrigation Projects or units operated or subject to administration by the Bureau of Indian Affairs, whether or not each project or unit is specifically mentioned in this part. The Officer-in-Charge is fully authorized to administer, carry out, and enforce these regulations either directly or through employees designated by him. Such enforcement includes the refusal to deliver water.

(b) The Officer-in-Charge is authorized to apply to irrigation subsistence units or garden tracts only those regulations in this part which in his judgment would be applicable in view of the size of the units and the circumstances under which they are operated.

(c) The Officer-in-Charge is responsible for performing such work and taking any action which in his judgment is necessary for the proper operation, maintenance and administration of the irrigation project or unit. In making such judgments, the Officer-in-Charge consults with water users and their representatives, and with tribal council representatives, and seeks advice on matters of program priorities and operational policies. The Officer-in-Charge will be guided by the basic requirement that the operation will be so administered as to provide the maximum possible benefits from the project's or unit's constructed facilities. The operations will insure safe, economical, beneficial, and equitable use of the water supply and optimum water conservation.

(d) The Secretary of the Interior reserves the right to exercise at any time all rights, powers, and privileges given him by law, and contracts with irrigation districts within Indian Irrigation Projects. Close cooperation between the Indian tribal councils, the project water users and the Officer-in-Charge is necessary and will be to the advantage of the entire project.

(e) The Area Director, or his delegated representative, is authorized to fix as well as to announce, by notice published in the FEDERAL REGISTER, the annual operation and maintenance assessment rates for the irrigation projects or units within his area of responsibility. In addition to the rates, the notices will include such information as is pertinent to the assessment, payment, and collections of the charges including penalties and duty of water.

(f) The rates will be based on a carefully prepared estimate of the cost of the normal operation and maintenance of the project. Normal operation and maintenance is defined for this purpose as the average per acre cost of all activities involved in delivering irrigation water and maintaining the facilities.

(g) San Carlos Irrigation Project, Arizona. The administration, rights obligations and responsibilities for the operation and maintenance of this project are set forth in the Repayment Contract dated June 8, 1931 as supplemented or amended, between the San Carlos Irrigation and Drainage District and the United States as authorized by the Act of June 7, 1924 (43 Stat. 475–476) and the Secretarial Order of June 15, 1938, title ''Order Defining Joint, District and Indian Works of the San Carlos Federal Irrigation Project: Turning over Operation and Maintenance of District Works to the San Carlos Irrigation and Drainage District.'' The

regulations appearing in this subchapter apply only to the Indian lands works and in the San Carlos Irrigation Project unless specified otherwise, and should not be interpreted or construed as amending or modifying the District Contract or the Secretarial Order.

[42 FR 30362, June 14, 1977, as amended at 43 FR 8799, Mar. 3, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 171.2 Irrigation season.

The irrigation season, when water shall be available for irrigation, will be established by the Officer-in-Charge.

§ 171.3 Domestic and stock water.

Domestic or stock water will not be carried in the project's or unit's irrigation system when in the judgment of the Officer-in-Charge such practice will:

(a) Interfere with the operation and maintenance of the system.

(b) Be detrimental to or endanger the canal, lateral system and/or related structures.

(c) Adversely affect the stored water supply for irrigation.

§ 171.4 Farm units.

For the purpose of delivery of water and the administration of the project or unit, a farm unit is defined as follows:

(a) For the Blackfeet, Crow, Fort Belknap, and Fort Peck Irrigation Projects, Montana, and the Colville Irrigation Project, Washington.

(1) Forty (40) or more contiguous acres of land in single ownership with the exception that those original Indian allotments containing less than 40 irrigable acres of the same subdivision of the public land survey shall also be considered farm units.

(2) Forty (40) or more contiguous acres of Indian-owned land under lease to one party.

(3) Forty (40) contiguous acres in multiple ownership within the same forty (40) acre subdivision of the public land survey.

(b) For the Fort Hall Irrigation Project, Idaho:

(1) Twenty (20) or more contiguous acres of land in single ownership covered by one or more water rights contracts.

(2) Twenty (20) or more contiguous acres of Indian-owned land under lease to one party or being farmed by one Indian.

(3) Ten (10) or more contiguous acres of subdivided land in multiple ownership.

(c) For the Flathead Irrigation Project, Montana: A contiguous area of land in single ownership containing not less than one forty (40) acre subdivision of the public land survey, or the original allotment as established by the Secretary of the Interior and as recorded or amended in the records of the Bureau of Land Management. In the case of leased land, it is defined as a contiguous area under a single lease. For Bureau of Land Management regulations pertaining to Flathead Project, see 43 CFR 2211.8, Flathead Irrigation District, Montana.

(d) For the Wapato Irrigation Project (all units), Washington:

(1) Eighty (80) or more contiguous acres in single ownership at the time of the establishment of the delivery system, or when subsequent changes of ownership result in larger tracts under single ownership and the owner requests that this land be treated as a farm unit, whether covered by one or more water right contracts.

(2) Eighty (80) or more contiguous acres of Indian-owned land under lease to one person or being farmed by one Indian.

(3) Eighty (80) contiguous acres in multiple ownership: *Provided,* That such acreage shall be within the same eight (80) acre subdivision of the U.S. public land survey.

(4) In all cases where an original Indian allotment consisted of less than eighty (80) contiguous acres, such original Indian allotment, whether (i) under single or multiple ownership and/or covered by one or more water right contracts, (ii) under lease to the same or different lessees, or (iii) farmed by one or more Indians, shall be treated as a farm unit.

(e) For all other projects or units: An original allotment, homestead, an assignment of unallotted tribal lands, or a contiguous, development lease area.

§171.5 Delivery points.

(a) Project operators will deliver irrigation water to one point on the boundary of each farm unit within the irrigation project. The Officer-in-Charge may establish additional delivery points when in his judgment it is impractical for the landowner to irrigate his farm unit from the one delivery point for such reasons as topography, isolation, or cost. When irrigation water is supplied from wells, the delivery point may be established at the well head. Where portions of a farm unit lie at an elevation too high to be watered by gravity flow from the normal elevation of water in the project distribution system, no change will be made in the water level elevation of the project system so as to place water on such land. Where such land has been included in the project, the landowner may install and operate pumping equipment at his own expense to raise the water to such included land from a point designated by the Officer-in-Charge and in accordance with his specifications. If the landowner so installs pumping equipment and pays the construction and maintenance charges, the project will deliver the same amount of water per acre for this land as the project delivers at the delivery point for other lands on the project.

(b) If a farm unit for which a project delivery point has been established is subsequently subdivided into smaller units by the owner or owners of the farm unit, the following provisions apply:

(1) A plat or map of the subdivision must be recorded and a copy filed with the Officer-in-Charge. The plat or map must show how the irrigation water is to be delivered to the irrigable acres in the subdivision.

(2) No further extensions or alterations in the project's system will be provided officials to serve the subdivided units, except as agreed to by the Officer-in-Charge and at the landowner's expense.

(3) Any additional construction necessary to deliver irrigation water to these units must be mutually worked out between the original owner of the farm units and the new owners of the subdivided unit at their expense.

(4) The project will not bear any responsibility for the operation and maintenance of such internal systems, or the division of irrigation water after it is delivered to the established project delivery points.

(c) Where project points of delivery have been established for farm units which are to be combined under lease or ownership into a singular farm unit to be irrigated by means of a sprinkler of more efficient system, the Officer-in-Charge may approve the removal or relocation of project delivery facilities. Such reorganization shall be at the expense of the landowners or lessees in conformance with established project standards and a time schedule which will not disrupt water delivery service to others on the system.

(d) Where a reorganization has been approved and established as in §171.5(c), any reversion requiring reestablishment of removed or relocated project delivery facilities must be approved by the Officer-in-Charge and conform to established project standards and time schedules which will not disrupt water delivery service to other water users on the system. All expenses incurred shall be the responsibility of the landowners or lessees.

§171.6 Distribution and apportionment of water.

(a) The Officer-in-Charge will establish the method of and procedures for the delivery and distribution of the available irrigation water supply. He will endeavor to apportion the water at all times on a fair and equitable basis between all project water users entitled to the receipt of irrigation water.

(b) Any person who interferes with the flow of water in or from the project's storage, carriage or lateral systems or opens or closes or in any other way changes the position of a headgate or any other water control structure without specific authority from the Officer-in-Charge or his designated representative will be subject to prosecution. Cutting a canal or lateral bank for the purpose of diverting water or placing an obstruction in such facilities in order to change the flow of water through a headgate will be considered a violation of this section.

(c) San Carlos Irrigation Project, Arizona—(1) The portion of the project's common water supply available for the Indian lands will be distributed subject to beneficial use in equal per acre amounts to each acre under irrigation and cultivation, insofar as possible.

(2) All water users (Indian and non-Indian) will be notified at the beginning of the irrigation season of the amount of stored and pumped water available. An apportionment of this water will be recommended by the Officer-in-Charge of the irrigation project to the approval of the Area Director. Subsequent apportionments may be made if and when additional water is available.

(3) If it is determined by the Officer-in-Charge that there is water in excess of demands and available storage facilities, he will promptly notify all water users that such water is available. This water shall not be charged against the water apportionment of the land on which it is used.

(d) Uintah Irrigation Project, Utah—(1) Water will be delivered to all lands under the Lakefork, Uintah and Whiterocks Rivers in accordance with the provisions of the decree of the Federal Court in the cases of the ''United States v. Dry Gulch Irrigation Company, et al.,'' and the ''United States v. Cedarview Irrigation Company, et al.,'' which decrees fix the maximum duty of three (3) acre-feet per acre for the period from March 1 to November 1 of each year. The rate of delivery will be substantially in accordance with the following schedule except that it may be modified by the Officer-in-Charge at such times as changed climatic conditions and the water supply indicate that such modification would be beneficial to the project.

Period	Acres per second-feet	Acre feet per acre
Mar. 1 to 18	None	None
Mar. 19 to 31	1,000	0.023
Apr. 1 to 10	800	.025
Apr. 11 to 20	400	.050
Apr. 21 to 30	200	.099
May 1 to 10	180	.110
May 11 to 20	135	.147
May 21 to 31	95	.229
June 1 to 20	70	.566
June 21 to 31	85	.233
July 1 to 10	90	.220
July 11 to 20	95	.208
July 21 to 31	100	.218
Aug. 1 to 10	133	.147
Aug. 11 to 20	155	.128
Aug. 21 to 31	175	.124
Sept.1 to 10	195	.101
Sept. 11 to 30	220	.180
Oct. 1 to 10	220	.090
Oct. 11 to 20	300	.066
Oct. 21 to 31	600	.036
Total		3,000

(2) The rotation method will be used in distributing the water diverted from the Lakefork, Uintah and Whiterocks Rivers. Rotation schedules will be prepared under direction of the Officer-in-Charge and will be put into effect each season as soon as it is determined what acreage is to be irrigated. A written copy of the water schedule will be delivered to each water user showing the time that his turn starts on each tract and the duration of each turn.

(3) In the event a rotation system is adopted for lands receiving water from the Duchesne River, the same procedure will be used as for the lands under the Lakefork, Uintah and Whiterocks Rivers. The Officer-in-Charge will advise all water users sufficiently in advance of the time the rotation schedule will go into effect.

(e) Wapato Irrigation Project, Washington—(1) To protect adjoining lands against seepage and erosion by the excess use of water on the bench lands of the Wapato-Satus Unit, the maximum delivery of water to the bench lands shall not exceed 4.5 acre-feet per acre per season.

(2) The rate of delivery to lands of the Satus 2 and Satus 3 subunits shall not exceed one (1) cubic foot per second for each 50 irrigated acres.

(3) The measurement and distribution of water for the lands on the Ahtanum Unit shall take place at the mutually advantageous points on the Ahtanum Main or Lower Canals. The conveyance of the water from these points of distribution to the irrigable acres of the farm units shall be entirely by and at the expense of the individual operators of the farms. However, when several such users join together to use one single channel for the conveyance of their water to the points of final diversion, they shall be jointly responsible for the channel of conveyance

and the apportionment of the water to their respective farm units.

§171.7 Application for and record of deliveries of irrigation water.

(a) Except when rotation schedules have been established and are being followed, water users in requesting the delivery of water will so notify the Officer-in-Charge or his designated representative by such means and with such advance notice as may be required by system operations and as established by the Officer-in-Charge. The request shall indicate the time the water is to be delivered, the period of time it will be used, the rate of flow desired, and where the water will be used.

(b) It is the responsibility of the ditchriders during the irrigation season to maintain records showing the beginning and ending time of each water delivery, the amount of such delivery, and the estimated acreage irrigated. Such records are to be filed at the irrigation project office at the end of the season.

(c) Water users on the Indian portion of the San Carlos Indian Irrigation Project will submit their requests for water to the Superintendent, Pima Agency.

§171.8 Surface drainage.

(a) The water users will be responsible for all waste water resulting from their irrigation practices and for its conveyance to project canals, drains, wasteways or natural drainage channels. Any expenses involved in doing this will be borne by the water user. Waste water may be emptied into project constructed ditches only at points designated by and in a manner approved by the Officer-in-Charge. In those situations involving two or more landowners and/or water users, it is their responsibility to work out a satisfactory arrangement among themselves for the conveyance of their waste water to project ditches or natural drainage channels.

(b) Waste water shall not be permitted to flow upon or collect in road or project rights-of-way. Failure to comply with this requirement could result in the Officer-in-Charge refusing the further delivery of water.

§171.9 Structures.

(a) All structures, including bridges or other crossings, which are necessary as a part of the project's irrigation and drainage system will be installed and maintained by the project.

(b) During the construction of a new irrigation project or the extension of an existing project, bridges, crossings or other structures may be built by the Officer-in-Charge for private use where justified by severance agreements or other practical considerations. Title to these structures may or may not be vested in the United States depending upon the agreement with the landowner. Structures built partially or wholly in lieu of severance damages may be required to be maintained by the landowner even though title remains with the United States.

(c) After a project is completed, additional structures crossing or encroaching on project canal, lateral or drain rights-of-way which are needed for private use may be constructed privately in accordance with plans approved by the Officer-in-Charge or by the project. In either case the cost of installing such structures will not be at the project's expense. Such structures will be constructed and maintained under revocable permits on proper forms issued by the Officer-in-Charge of the irrigation project to the party or parties desiring such structures.

(d) It it is determined that a crossing constructed for and by the project is no longer needed for operation and maintenance of the system. It should be removed. However, if a private party, corporation, State, or other Federal entity desires to use the crossing, it may be transferred to such entity by the Officer-in-Charge under a permit which relieves the United States from any further liability or responsibility for the crossing, including its maintenance. The following provisions pertain:

(1) Permits issued in such situations shall stipulate what is granted, and accepted by the permittee on the condition that the repair and maintenance of the structure shall be the duty of the permittee or his successors without cost to the irrigation project.

(2) The permit shall further provide that if any such structure is not regularly used for a period of one year or is not properly maintained, the Officer-in-Charge may notify the person responsible for the structure's maintenance either to remove it or to correct any unsafe conditions within a period of 90 days.

(3) If the structure is not removed or the unsafe condition corrected within the time allowed, it may be removed by the Officer-in-Charge, the cost of such removal to be paid by the party responsible for the maintenance of the structure.

§ 171.10 Fencing.

Fences across project rights-of-way will not be constructed without the approval of the Officer-in-Charge. The granting of such approval shall be dependent upon proper installation so as not interfere with the flow of water or the passage of project operators and equipment. In case an unauthorized fence is installed, the landowner shall be notified to remove it. If it is not removed within a reasonable period of time or satisfactory arrangements made with the Officer-in-Charge, it may be removed by project personnel at the landowner's expense.

§ 171.11 Obstructions.

No obstructions of any kind including service or farm ditches, will be permitted upon project rights-of-way. Due notice will be given to an operator or landowner to remove any obstructions. If not removed within a reasonable period of time after notice is given, an obstruction will be removed by project forces at the expense of the operator or landowner.

§ 171.12 Rights-of-way.

(a) Rights-of-way reserved for the project's irrigation system are of sufficient width to permit passage and use of equipment necessary for construction and proper operation and maintenance of the project's canals, laterals, and other irrigation works.

(b) In the construction of new irrigation projects or extension of existing projects, rights-of-way which have not been reserved across Indian lands will be obtained in accordance with part 169 of this chapter.

§ 171.13 Crops and statistical reports.

An annual project crops and statistical report shall be prepared by the Officer-in-Charge. The landowner or farm unit operator shall cooperate in furnishing such information as requested.

§ 171.14 Carriage agreements and water right applications.

(a) *Pine River Indian Irrigation Project, Colorado.* If the Area Director determines that there is sufficient capacity in the project's carriage and/or distribution system in excess of that required by the project he is authorized to enter into carriage agreements with non-project water users to convey non-project water through project facilities for delivery to non-project lands.

(b) *Uintah Indian Irrigation Project, Utah.* If the Superintendent determines that there is sufficient capacity in the irrigation project's carriage and/or distribution system in excess of that required by the project, he is authorized to enter into carriage agreements with non-project water users to convey non-project lands. The Superintendent is also authorized to enter into carriage agreements with private irrigation or ditch companies for the conveyance of project water through non-project facilities for delivery to isolated Indian lands that cannot be served from project facilities.

(c) *Wapato Irrigation Project, Washington.* The Project Engineer is authorized to execute water right applications submitted by landowners in the project on behalf of the Secretary of the Interior. Such applications should be submitted on the approved Departmental form.

§ 171.15 Leaching water.

(a) The Officer-in-Charge is authorized to furnish irrigation water for leaching purposes without the payment of operation and maintenance charges to any Indian trust land, or patent in fee land covered by a repayment contract, as an aid to improve land within the project that is impregnated by alkali or in the development of new project land.

(b) Delivery of such water will depend upon the availability of water and the preparation of a definite plan of operation by the land operator satisfactory to the Officer-in-Charge. In addition, the operator shall agree to meet such reasonable leaching and cropping activities as shall be prescribed by the Officer-in-Charge.

(c) If prompt and beneficial use of the leaching water is not made by or before July 1 of the season for which it is granted, the Officer-in-Charge may declare the leaching permit forfeited. The normal water charges will be considered as assessed and any delinquency enforced as though no leaching privilege had been granted.

(d) In the case of patent in fee lands no water will be delivered for leaching purposes until the annual construction costs, when assessed, are paid.

§ 171.16 Excess water.

(a) *General.* On those irrigation projects where a water duty or water quota has been established each water user will be notified when his quota of water, as covered by the basic assessment and as announced in the public notice, has been delivered. In such cases, additional irrigation water, if available, may be delivered providing the water user so requests it and agrees to pay for the excess water in accordance with the excess water provisions as set forth in the public notice.

(b) *Flathead Indian Irrigation Project, Montana.* (1) After an agreement has been reached by the Commissioners of the irrigation district and the Officer-in-Charge as to the duty of water on individual tracts where water users claim excess requirements above the duty of water established for the project on account of porous or gravelly soils, the Officer-in-Charge is authorized to increase the quantity of water to be delivered to such tracts.

(2) The amount of water delivered in such cases will not exceed four (4) acre feet per assessable acre except in the Moiese Division where the amount shall not exceed six (6) acre feet providing there is sufficient water available in Lower Crow Reservoir without having to draw on the water supply for the Mission Valley Division.

(3) The charge for such water shall be at the same general rate as established for project land not having such a porous or gravely condition.

§ 171.17 Delivery of water.

(a) Irrigation water will not be delivered until the annual operation and maintenance assessments are paid in accordance with the established annual rate schedule as set forth in the public notice issued by the Area Director. Under the following special circumstances, this rule may be waived and water delivered to:

(1) Trust and restricted lands farmed by the Indian owner when the Superintendent has certified that the operator is financially unable to pay the assessment and he has made arrangements to pay such assessments from the proceeds received from the sale of crops or from any other source of income. In such cases the unpaid charges will stand as a first lien against the land until paid but without penalty on account of delinquency.

(2) Non-Indian lands on which there is an approved deferred payment contract executed under the provisions of the Act of June 22, 1936 (49 Stat, 1803).

(3) Land on which an adjustment or cancellation of unpaid assessments has been recommended and final action is pending.

(b) Water will not be delivered to Indian trust or restricted land that are under lease approved by the Secretary of the Interior or his authorized representative acting under delegated authority until the lessee has paid the annual assessed operation and maintenance charges.

(c) No water will be delivered to Indian trust land under a lease that has been negotiated by an Indian owner until the owner has paid the annual assessed operation and maintenance charges or has made satisfactory arrangements for their payment with the Superintendent who has so notified the Officer-in-Charge.

(d) Water will not be delivered to any lands within an irrigation district which has executed a repayment contract with the United States until all irrigation charges, as assessed, are paid

in accordance with the terms and conditions of the contracts and the public notice as issued by the Area Director.

(e) All irrigation districts may make such rules and regulations as they may find necessary in regard to the delivery of the water to water users within the district who are delinquent in their payments to the district of assessed irrigation charges. Such rules and regulations will be adhered to by the Officer-in-Charge when it appears to be in the best interests of the United States and the district to do so.

(f) Water will not be delivered to lands that are subject to construction assessments not paid in accordance with part 134 of this chapter.

(g) Flathead Indian Irrigation Project, Montana—(1) *Secretarial Water Right holders.* (i) For all acres recognized by the Secretary of the Interior as entitled to a ''Secretarial Water Right'', the Officer-in-Charge is authorized to carry such water in the project's carriage and distribution system and deliver it: *Providing,* That landowner holding such a right requests it and his land is so located that the water can be delivered without undue expense to the project. Before this service is provided, the landowner must also agree to pay a minimum of fifty (50) percent of up to a maximum of one hundred (100) percent of the annual operation and maintenance charges as assessed against project lands in the same general area as his. Under such agreement the project will not be obligated to deliver more than that allowed for each acre of land under the Secretary's private water right findings less a proportionate share of the project's normal losses in transporting the water from the point of entry into the project's system to the point of delivery.

(ii) ''Secretarial Water rights'' are defined as those rights allocated to Indian allotments by the Assistant Secretary of the Interior by his approval on November 25, 1921, of the findings of the Commission appointed by him to investigage the ''private rights'' on the Flathead Indian Reservation. Authority: Sec. 9, Act of May 29, 1908 (35 Stat. 449).

(2) *Pump lands—Flathead Irrigation Project.* (i) The Officer-in-Charge is authorized to deliver irrigation water to lands (pump lands) within a project farm unit that are too high to be served from the project's gravity flow system: *Providing,* The holder of legal title to the lands so requests it in writing and agrees to have such land designated by the Secretary of the Interior or his authorized representative as a part of the irrigation project. Land so designated shall be subject to the assessment and payment of the pro rata per acre share of the project's construction, operation and maintenance costs the same as all other lands within the irrigation project in the same general area. In addition, such ''pump lands'' shall be obligated to pay an additional assessment on an annual basis as determined by the Officer-inCharge to defray the cost of pumping the water from the Flathead River for those lands in the Mission Valley Division, and from the Little Bitterroot Lake for lands in the Camas Division.

(ii) At the time he submits the request, the landowner must also agree in writing to include the ''pump lands'' in an existing irrigation district or a district that may be subsequently formed pursuant to the laws of the State of Montana. This will not apply to Indian trust or restricted lands as such lands cannot be included within an irrigation district.

(iii) A request for the inclusion of ''pump lands'' into the project will not be considered until the Officer-in-Charge determines that there is sufficient project water available to serve these lands without adversely affecting in any way the water entitlement of the designated project lands for which the project was designed and constructed.

(iv) All costs incidental to the pumping and distribution of the delivered water from the project farm unit delivery point to the ''pump lands'' shall be borne by the landowner.

§ 171.18 Service or farm ditches.

The service or farm ditches into which water is delivered from project canals or laterals must have ample capacity and be maintained by the water user in proper condition to receive water and convey it to the place of use with a minimum of loss. Water delivery

will be refused to such ditches not satisfactorily maintained. Project irrigation water shall be put to beneficial use.

§ 171.19 Operation and maintenance assessments.

(a) Operation and maintenance assessments will be levied against the acreage within each allotment, farm unit or tribal unit that is designated as assessable and to which irrigation water can be delivered by the project operators from the constructed works whether water is requested or not, unless specified otherwise in this section.

(1) *Colville Indian Irrigation Project, Washington.* Operation and maintenance assessments will be levied against all patent in fee and Indian trust lands to which water can be delivered for irrigation and for which an application for water has been made by the water user and approved by the Superintendent.

(2) *Wapato Irrigation Project-Toppenish-Simcoe Unit, Washington.* Operation and maintenance assessments will be levied against all lands which can be irrigated from the constructed works for which application for water is made annually and approved by the Project Engineer.

(b) Subdivided farm units—(1) *General.* (i) Where farm units, as defined in § 171.4 have been subdivided into smaller units, the Area Director or such official as he may so delegate may, at his discretion, fix a higher operation and maintenance rate for such subdivided acreage than the rate fixed for the acreage in the original farm unit. In such cases the higher rate will also be announced in the annual public notice.

(ii) In the event higher rates are fixed for a subdivided farm unit, the individual owners thereof may obtain for their lands the same rate as fixed for acreages within farm units not so divided by joining in a written contract with the other owners within the subdivided unit. Under such a contract, the various owners will appoint an agent in whom shall be vested full power and authority to enter into a contract with the Area Director, hereafter referred to as the Contracting Officer, or such official as he may so authorize, covering the water rights for the entire area of the several small acreages: *Provided, however,* Such contract must not represent less acreage than that included in the original farm unit unless a smaller unit has been established by project regulation as eligible for a subdivision contract; *And provided further,* That whether the contract involves acreage in one or more farm units, it must represent contiguous acreages.

(iii) The contract between the agent of the owners of the small tracts and the Contracting Officer shall be executed on or before February 1 of the year preceding the next irrigation season. The agent shall at the time of the execution of this contract, on a form approved by the Secretary of the Interior, furnish a certified copy of the contract executed by the several landowners of the subdivided tract appointing the agent to act in their behalf.

(iv) Any owner of a tract within a subdivided unit, with the written consent of the owners of a majority of the acreage, under a contract as set forth in paragraph (b)(1)(iii) of this section, may voluntarily withdraw from the contract by filing a written notice of his intent to withdraw with the Contracting Officer on or before February 1 of the year, such withdrawal is to be effective, together with the consent of the owners of the majority of the acreage endorsed thereon; *Provided,* That, the remaining acreage is contiguous; such withdrawal does not reduce the remaining acreage under the contract to less than the acreage included in the original farm unit before it was subdivided or less than the minimum acreage established on a project as eligible for a subdivision contract; and all irrigation charges due under said contract have been paid. Upon the receipt of said notice, the Contracting Officer, if the notice meets the requirements as herein provided, shall note his approval thereon and send a copy thereof to the agent of the landowners. Thereafter the land of the withdrawing owner shall no longer be subject to the contract.

(v) If one or more owners under a contract desire to withdraw, and if, by so doing, it would reduce the total remaining contiguous acreage under the contract to less than the total acreage included in the original farm unit, or

the minimum eligible acreage established on the project, the contract can be terminated. However, before such a termination can be approved, a written notice from the owners of the majority of the acreage must be filed with the Contracting Officer indicating their consent to and requesting his approval of the termination. The notice must be filed on or before February 1 of the year the termination is to become effective, and must include the payment of any irrigation charges then due under the existing contract. Upon the receipt of the written notice, the contracting Officer shall note his approval thereon provided that the requirements set forth herein are satisfied. A copy of the approved notice will be given to the agent of the landowners concerned.

(2) *Fort Hall Irrigation Project.* The Superintendent, Fort Hall Agency, is authorized to approve contracts as set forth in this section as well as withdrawals or termination of such contracts. However, no contracts will be entered into if the total contiguous acreage is less than 10 acres.

(3) *Wapato Irrigation Project.* The Project Engineer is authorized to approve contracts as set forth in paragraph (b) of this section, as well as withdrawals or termination of such contracts. However, no contracts will be entered into if the total contiguous acreage is less than 40 acres.

§ 171.20 Water users' ledgers.

(a) Water users' ledgers will be maintained by the Officer-in-Charge on all irrigation projects or units where irrigation assessments are levied and collected. Separate entries shall be made in the ledger for each farm tract, and bills issued to the owner or owners of record. When payment is received, it will be credited to the proper ledger account.

(b) When Indian trust or restricted land is leased and the Officer-in-Charge has been so advised by the Superintendent, irrigation bills will be submitted to the lessee. Upon receipt of payment, it will be credited to the Indian owner or owners of record in the ledger account.

(c) On those projects where irrigation districts have been formed and have executed repayment contracts, irrigation bills will be rendered to the district. When payment is received, it will be credited to the proper ledger accounts.

§ 171.21 Health and sanitation.

Use of Government storage reservoirs, canals, laterals or drains for disposal of sewage and trash shall not be permitted under any circumstances. If such conditions occur, and project forces are unable to correct them, the Officer-in-Charge shall request the Area Director to arrange for the necessary legal action.

§ 171.22 Complaints.

All complaints must be made in writing to the Project Engineer or the Officer-in-Charge of the project.

§ 171.23 Disputes.

In case of a dispute between a water user and the Project Engineer or Officer-in-Charge of the project concerning the application of the regulations of this part or a decision rendered by such official, the water user within 30 days may appeal to the Area Director. Further appeals may be made to the Commissioner of Indian Affairs pursuant to part 2 of this chapter.

PART 172—PUEBLO INDIAN LANDS BENEFITED BY IRRIGATION AND DRAINAGE WORKS OF MIDDLE RIO GRANDE CONSERVANCY DISTRICT, NEW MEXICO

AUTHORITY: 45 Stat. 312.

§ 172.1 Acreage designated.

Pursuant to the provisions of the act of March 13, 1928 (45 Stat. 312) the contract executed between the Middle Rio Grande Conservancy District of New Mexico and the United States under date of December 14, 1928, the official plan approved pursuant thereto, as modified, and the terms of section 24 of a contract between said parties dated September 4, 1936, dealing among other things with the payment of operation and maintenance and betterment assessments by the United States to the District, and section 24 of a similar contract dated April 8, 1938 executed by the representative of the United States, on this date, it is found that a

total of 20,242.05 acres of Pueblo Indian lands of the Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia and Isleta is susceptible of economic irrigation and cultivation and is materially benefited by the works constructed by said District. This acreage is designated as follows:

Lands with recognized water rights not subject to operation and maintenance or betterment charges by the District and designated as ''now irrigated''—8,847

Lands classified as ''newly reclaimed'' lands (exclusive of the purchased area)—11,074.4

Lands classified as newly reclaimed lands (the area recently purchased)—320.65

Total irrigable area materially benefited—20,242.05

[22 FR 10641, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

PART 173—CONCESSIONS, PERMITS AND LEASES ON LANDS WITHDRAWN OR ACQUIRED IN CONNECTION WITH INDIAN IRRIGATION PROJECTS

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AUTHORITY: 52 Stat. 193; 25 U.S.C. 390.

SOURCE: 22 FR 10642, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§173.0 Scope.

The regulations in this part are promulgated governing the granting of concessions, business, agricultural and grazing leases or permits on reservoir sites, reserves for canals or flowage areas, and other lands withdrawn or otherwise acquired in connection with the San Carlos, Fort Hall, Flathead and Duck Valley or Western Shoshone irrigation projects.

§173.1 Terms used.

When used in this part ''Secretary'' refers to the Secretary of the Interior; ''project'' to the Federal Indian irrigation project on which concession, lease or permit is granted, and ''project engineer'' to the engineer in charge of said project.

§173.2 Project engineer's authority.

The project engineer is the official charged with the responsibility for the enforcement of this part. He is vested with the authority to issue temporary concession permits to applicants for periods not to exceed 30 days. All except temporary permits shall become effective when approved by the Secretary.

§173.3 Enforcement.

The project engineer shall enforce these and all project regulations now or hereafter promulgated by the Secretary. Willful violation or failure to comply with the provisions of this part and all proper orders of the project engineer shall be cause for revocation of the permit by the Secretary who shall be the judge of what constitutes such violation. The project engineer may suspend any permit for cause. The project engineer shall, immediately after suspending a permit, submit to the Secretary through the Commissioner of Indian Affairs a detailed report of the case, accompanied by his reasons for the action and his recommendations, for final action by the Secretary.

§ 173.4 Permits subject to existing and future rights-of-way.

Use by the permittee of any land authorized under this part shall be subject to the right of the Secretary to establish trails, roads and other rights-of-way including improvements thereupon or through the premises, and the right to use same by the public. No interference shall be permitted with the continued use of all existing roads, trails and other rights-of-way and improvements thereon.

§ 173.5 Plans, approval thereof.

No building or other structure shall be erected by permittee except in accordance with plans, specifications and locations approved by the project engineer. All premises and appurtenances shall be kept in a sanitary, safe and sightly condition.

§ 173.6 Stock grazing.

Permittees may graze upon lands covered by such permits, such stock as may be required in connection with the purposes for which the permit is issued subject to such restrictions and limitations as may be prescribed by the project engineer.

§ 173.7 Permits, transferable.

Permits may be transferred only with the approval of the Secretary.

§ 173.8 Applications.

All applications for permits must be made on the approved form. The project engineer will furnish copies of this form upon request. All applications must be executed in triplicate.

§ 173.9 Bonds.

Except in cases of temporary concession permits, leases, permits, and traders' licenses granted under parts 166, 162, and 140 of this chapter, which are governed by the requirements of those parts, the applicant shall within 60 days after approval of the application furnish a surety bond for the faithful performance of the terms of the permit in an amount equal to the total sum accruing during the period of the permit. Such bond shall be executed by an approved surety company, or by at least three individual sureties, whose individual unencumbered assets are equal to double the amount of the bond. In the case of temporary concession permits, the permittee shall deposit at the time of receiving the permit, a sum equal to twice the rental, which sum shall, upon the expiration of the permit, be refunded to the permittee, if all the terms and conditions of the permit have been met; otherwise, such sum shall be retained as liquidated damages.

§ 173.10 Payments.

Each permittee shall pay at the time of receiving the permit the first year's charge as fixed therein. When a permit extends over a period of years, the next and succeeding payments shall be due and payable annually in advance. The full amount accruing under a temporary permit shall be paid at the time the application is filed.

§ 173.11 Supervision of permittees' rates.

All rates or charges collected by a permittee for services rendered by the permittee in the operation of the concession granted under a permit, must be submitted through the project engineer to the Secretary for approval. Copies of the approved rate schedule shall be posted in at least two conspicuous places on the premises. Approved rates may not be changed without first obtaining in the same manner a change in the rate schedule. The Secretary shall have the right to readjust rates charged from time to time and to amend or change any permit issued. Failure to comply with the approved rates automatically makes the permit subject to cancellation.

§ 173.12 Services from project.

When the facilities of the project make it possible to supply water for domestic purposes, electricity or any other type of service to the permittee, the cost of connecting the project facilities shall be borne by the permittee and the work must be in accordance with standard practices and accepted by the project engineer, and as provided for in project regulations. All services rendered by the project to the permittee shall be paid for at the existing or modified schedule of rates; or if

no schedule has been approved, at a rate to be approved by the Secretary which will reasonably reimburse the project for the cost of such services.

§173.13 Permit not a lease.

Any permit issued under this part does not grant any leasehold interest nor cover the sale, barter, merchandising, or renting of any supplies or equipment except as therein specified. Any permittee who engages in trade with the Indians must also apply for and receive a trader's license as provided by part 140 of this chapter.

§173.14 Further requirements authorized.

The project engineer is authorized to incorporate into any proposed permit to meet the needs of any particular case, subject to the approval of the Secretary, such further special requirements as may be agreed upon by him and the applicant, such requirements to be consistent with the general purposes of this part.

§173.15 Permittee subject to State law.

The holder of any permit issued under this part shall be subject to and abide by the laws and regulations of the United States and State laws if applicable to the conduct of the particular business or activity conducted by the permittee. Violations of this section shall render the permit void but shall not release the permittee from any obligations arising thereunder.

§173.16 Reserved area, Coolidge Dam.

No permit for any commercial business or other activity (except boating concessions confined to the Soda Spring Canyon) shall be issued to any applicant to operate within a radius of three-fourths of a mile from the center of the Coolidge Dam, Arizona.

§173.17 Agricultural and grazing permits and leases.

(a) Permits or leases may be granted after the lands set forth in §173.0 have been classified as to use and then only for the purpose for which the land is classified. Permits for grazing lands suitable for division into range units shall be granted in accordance with part 166 of this chapter; and agricultural lands and all other grazing lands shall be leased in accordance with part 166 of this chapter.

(b) Lands for which leases or permits are granted pursuant to the terms and conditions of this part shall not be eligible for benefit payments under the provisions and conditions of the Crop Control and Soil Conservation Act of April 27, 1935 (49 Stat. 163; 16 U.S.C. 590a), as amended by the act of February 29, 1936 (49 Stat. 1148; 16 U.S.C. 590g), and subsequent amendatory acts.

§173.18 Term and renewal of permits.

No concession granted under the provisions of this part shall extend for a period in excess of 10 years. An application for the renewal of a lease, permit, or concession permit shall be treated in the same manner as an original application under this part. Should there be an application or applications other than the renewal application for a permit covering the same area, the renewal application may, if the applicant has met all the requirements of the expiring permit and has been a satisfactory permittee, be given preferential consideration for the renewal of the permit should the applicant meet the highest and most satisfactory offer contained in the several applications.

§173.19 Improvements.

Title to improvements constructed on the premises by the permittee shall be fixed and determined by the terms of the permit.

§173.20 Revocation of permits.

Any permit issued pursuant to this part may be revoked at any time within the discretion of the Secretary. Agricultural and grazing leases dealt with in §173.17 shall be subject to cancellation as provided for in the respective parts 162 and 166 of this chapter, and the conditions of the instruments executed pursuant thereto.

§173.21 Notice to vacate.

A permittee shall within 10 days after notification in writing of the cancellation of his permit by the Secretary, vacate the premises covered by the said permit. Any person occupying lands dealt with in the act of April 4, 1938 (52 Stat. 193) without an approved

permit or lease shall be notified in writing by the project engineer of the requirements of this part and that for the failure of such person to comply with these requirements and receive a permit or lease within 60 days after receipt of the written notice shall constitute a willful violation of this part, and the project engineer shall submit promptly to the Commissioner of Indian Affairs a detailed report concerning the case, together with recommendations looking to the taking of appropriate legal action to remove such person from the area and to the collection of such funds to compensate for any use made of the property or damages suffered thereto.

§ 173.22 Disposition of revenue.

Funds derived from concessions or leases under this part except those so derived from Indian tribal property withdrawn for irrigation purposes and for which the tribe has not been compensated, shall be available for expenditure under existing law in the operation and maintenance of the irrigation project on which collected and as provided for in part 161 of this chapter. Funds so derived from Indian tribal property withdrawn for irrigation purposes and for which the tribe has not been compensated, shall be deposited to the credit of the proper tribe.

§ 173.23 Organized tribes.

Concessions and leases on tribal lands withdrawn or reserved for the purposes specified in the act of April 4, 1938 (52 Stat. 193) and dealt with in this part, of any Indian tribe organized under section 16 of the act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 476) for which the tribe has not been compensated shall be made by the organized tribe pursuant to its constitution or charter: *Provided*, No lease or concession so made shall be inconsistent with the primary purpose for which the lands were reserved or withdrawn.

PART 175—INDIAN ELECTRIC POWER UTILITIES

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AUTHORITY: 5 U.S.C. 301; sec. 2, 49 Stat. 1039–1040; 54 Stat. 422; sec. 5, 43 Stat. 475–476; 45 Stat. 210–211; and sec. 7, 62 Stat. 273.

SOURCE: 56 FR 15136, Apr. 15, 1991, unless otherwise noted.

Subpart A—General Provisions

§ 175.1 Definitions.

Appellant means any person who files an appeal under this part.

Area Director means the Bureau of Indian Affairs official in charge of a designated Bureau of Indian Affairs Area, or an authorized delegate.

Customer means any individual, business, or government entity which is provided, or which seeks to have provided, services of the utility.

Customer service means the assistance or service provided to customers, other than the actual delivery of electric power or energy, including but not limited to such items as: Line extension, system upgrade, meter testing, connections or disconnection, special meter-reading, or other assistance or service as provided in the operations manual.

Electric power utility or Utility means that program administered by the Bureau of Indian Affairs which provides for the marketing of electric power or energy.

Electric service means the delivery of electric energy or power by the utility to the point of delivery pursuant to a service agreement or special contract. The requirements for such delivery are set forth in the operations manual.

Officer-in-Charge means the individual designated by the Area Director as the official having day-to-day authority and responsibility for administering the utility, consistent with this part.

Operations manual means the utility's written compilation of its procedures and practices which govern service provided by the utility.

Power rates means the charges established in a rate schedule(s) for electric service provided to a customer.

Service means electric service and customer service provided by the utility.

Service agreement means the written form provided by the utility which constitutes a binding agreement between the customer and the utility for service except for service provided under a special contract.

Service fees means the charge for providing administrative or customer service to customers, prospective customers, and other entities having business relationships with the utility.

Special contract means a written agreement between the utility and a customer for special conditions of service. A special contract may include, but is not limited to, such items as: Street or area lights, traffic lights, telephone booths, irrigation pumping, unmetered services, system extensions and extended payment agreements.

Utility office(s) means the current or future facility or facilities of the utility which are used for conducting general business with customers.

§175.2 Purpose.

The purpose of this part is to regulate the electric power utilities administered by the Bureau of Indian Affairs.

§175.3 Compliance.

All utility customers and the utilities are bound by the rule in this part.

§175.4 Authority of area director.

The Area Director may delegate authority under this part to the Officer-in-Charge except for the authority to set rates as described in §§175.10 through 175.13.

§175.5 Operations manual.

(a) The Area Director shall establish an operations manual for the administration of the utility, consistent with this part and all applicable laws and regulations. The Area Director shall amend the operations manual as needed.

(b) The public shall be notified by the Area Director of a proposed action to establish or amend the operations manual. Notices of the proposed action shall be published in local newspaper(s) of general circulation, posted at the utility office(s), and provided by such other means, if any, as determined by the Area Director. The notice shall contain: A brief description of the proposed action; the effective date; the name, address, and telephone number for addressing comments and inquiries; and the period of time in which comments will be received. Notices shall be published and posted at least 30 days before the scheduled effective date of the operations manual, or amendments thereto.

(c) After giving consideration to all comments received, the Area Director shall establish or amend the operations manual, as appropriate. A notice of the Area Director's decision and the basis for the decision shall be published and

posted in the same manner as the previous notices.

§ 175.6 Information collection.

The information collection requirements contained in § 175.22 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0021. This information is being collected to provide electric power service to customers. Response to this request is ''required to obtain a benefit.'' Public reporting for this information collection is estimated to average .5 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any other aspect of this information collection to the Bureau of Indian Affairs, Information Collection Clearance Officer, room 337–SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Project 1076–0021, Office of Management and Budget, Washington, DC 20502.

Subpart B—Service Fees, Electric Power Rates and Revenues

§ 175.10 Revenues collected from power operations.

The Area Director shall set service fees and electric power rates in accordance with the procedures in §§ 175.11 and 175.12 to generate power revenue.

(a) *Revenues.* Revenues collected from power operations shall be administered for the following purposes, as provided in the Act of August 7, 1946 (60 Stat. 895), as amended by the Act of August 31, 1951 (65 Stat. 254):

(1) Payment of the expenses of operating and maintaining the utility;

(2) Creation and maintenance of reserve Funds to be available for making repairs and replacements to, defraying emergency expenses for, and insuring continuous operation of the utility;

(3) Amortization, in accordance with repayment provisions of the applicable statutes or contracts, of construction costs allocated to be returned from power revenues; and

(4) Payment of other expenses and obligations chargeable to power revenues to the extent required or permitted by law.

(b) *Rate and fee reviews.* Rates and fees shall be reviewed at least annually to determine if project revenues are sufficient to meet the requirements set forth in paragraph (a) of this section. The review process shall be as prescribed by the Area Director.

§ 175.11 Procedures for setting service fees.

The Area Director shall establish, and amend as needed, service fees to cover the expense of customer service. Service fees shall be set by unilateral action of the Area Director and remain in effect until amended by the Area Director pursuant to this section. At least 30 days prior to the effective date, a schedule of the service fees, together with the effective date, shall be published in local newspaper(s) of general circulation and posted in the utility office(s). The Area Director's decision shall be final for the Department of the Interior.

§ 175.12 Procedures for adjusting electric power rates except for adjustments due to changes in the cost of purchased power or energy.

Except for adjustments to rates due to changes in the cost of purchased power or energy, the Area Director shall adjust electric power rates according to the following procedures:

(a) Whenever the review described in § 175.10(b) of this part indicates that an adjustment in rates may be necessary for reasons other than a change in cost of purchased power or energy, the Area Director shall direct further studies to determine whether a rate adjustment is necessary and, if indicated, prepare rate schedules.

(b) Upon completion of the rate studies, and where a rate adjustment has been determined necessary, the Area Director shall conduct public information meetings as follows:

(1) Notices of public meetings shall be published in local newspapers of general circulation, posted at the utility office(s), and provided by such other means, if any, as determined by the Area Director. The notice shall provide: The date, time, and place of

the scheduled meeting; a brief description of the action; the name, the address, and the telephone number for addressing comments and inquiries; and the period of time in which comments will be received. Notices shall be published and posted at least 15 days before the scheduled date of the meeting.

(2) Written and oral statements shall be received at the public meetings. The record of the public meeting shall remain open for the filing of written statements for five days following the meeting.

(c) After giving consideration to all written and oral statements, the Area Director shall make a decision about a rate adjustment. A notice of the Area Director's decision, the basis for the decision, and the adjusted rate schedule(s), if any, shall be published and posted in the same manner as the previous notices of public meetings.

(d) Rates shall remain in effect until further adjustments are approved by the Area Director pursuant to this part.

§175.13 Procedures for adjusting electric power rates to reflect changes in the cost of purchased power or energy.

Whenever the cost of purchased power or energy changes, the effect of the change on the cost of service shall be determined and the Area Director shall adjust the power rates accordingly. Rate adjustments due to the change in cost of purchased power or energy shall become effective upon the unilateral action of the Area Director and shall remain in effect until amended by the Area Director pursuant to this section. A notice of the rate adjustment, the basis for the adjustment, the rate schedule(s) shall be published and posted in the same manner as described in §175.12(c) of this part. The Area Director's decision shall be final for the Department of the Interior.

Subpart C—Utility Service Administration

§175.20 Gratuities.

All employees of the utility are forbidden to accept from a customer any personal compensation or gratuity rendered related to employment by the utility.

§175.21 Discontinuance of service.

Failure of customer(s) to comply with utility requirements as set forth in this part and the operations manual may result in discontinuance of service. The procedure(s) for discontinuance of service shall be set forth in the operations manual.

§175.22 Requirements for receiving electrical service.

In addition to the other requirements of this part, the customer, in order to receive electrical service, shall enter into a written service agreement or special contract for electrical power services.

§175.23 Customer responsibilities.

The customer(s) of a utility subject to this part shall:

(a) Comply with the National Electrical Manufacturers Association Standards and/or the National Electrical Code of the National Board of Fire Underwriters for Electric Wiring and Apparatus as they apply to the installation and operation of customer-owned equipment;

(b) Be responsible for payment of all financial obligations resulting from receiving utility service;

(c) Comply with additional requirements as further defined in the operations manual;

(d) Not operate or handle the utility's facilities without the express permission of the utility;

(e) Not allow the unauthorized-use of electricity; and

(f) Not install or utilize equipment which will adversely affect the utility system or other customers of the utility.

§175.24 Utility responsibilities.

A utility subject to this part shall:

(a) Endeavor to provide safe and reliable energy to its customers. The specific types of service and limitations shall be further defined in the operations manual;

(b) Construct and operate facilities in accordance with accepted industry practice;

(c) Exercise reasonable care in protecting customer-owned equipment and property;

(d) Comply with additional requirements as further defined in the operations manual;

(e) Read meters or authorize the customer(s) to read meters at intervals prescribed in the operations manual, service agreement, or special contract, except in those situations where the meter cannot be read due to conditions described in the operations manual;

(f) Not operate or handle customer-owned equipment without the express permission of the customer, except to eliminate what, in the judgment of the utility, is an unsafe condition; and

(g) Not allow the unauthorized use of electricity.

Subpart D—Billing, Payments, and Collections

§175.30 Billing.

(a) *Metered customers.* The utility shall render bills at monthly intervals unless otherwise provided in special contracts. Bills shall be based on the applicable rate schedule(s). Unless otherwise determined, the amount of energy and/or power demand used by the customer shall be as determined from the register on the utility's meter at the customer's point of delivery. A reasonable estimate of the amount of energy and/or power demand may be made by the utility in the event a meter is found with the seal broken, the utility's meter fails, utility personnel are unable to obtain actual meter registrations, or as otherwise agreed by the customer and the utility. Estimates shall be based on the pattern of the customer's prior consumption, or on an estimate of the customer's electric load where no billing history exists.

(b) *Unmetered customers.* Bills shall be determined and rendered as provided in the customer's special contract.

(c) *Service fee billing.* The utility shall render service fee bills to the customer(s) as a special billing.

§175.31 Methods and terms of payment.

Payments shall be made in person or by mail to the utility's office designated in the operations manual. The utility may refuse, for cause, to accept personal checks for payment of bills.

§175.32 Collections.

The utility shall attempt collection on checks returned by the customer's bank due to insufficient funds or other cause. An administrative fee shall be charged for each collection action taken by the utility other than court proceedings. An unredeemed check shall cause the customer's account to become delinquent, which may be cause for discontinuance of service. Only legal tender, a cashier's check, or a money order shall be accepted by the utility to cover an unredeemed check and associated charges.

Subpart E—System Extensions and Upgrades

§175.40 Financing of extensions and upgrades.

(a) The utility may extend or upgrade its electric system to serve additional loads (new or increased loads).

(b) If funds are not available, but the construction would not be adverse to the interests of the utility, a customer may contract with the utility to finance all necessary construction.

(1) A customer may be allowed to furnish required material or equipment for an extension or upgrade or to install such items or to pay the utility for such installation. Any items furnished or construction performed by the customer shall comply with the applicable plans and specifications approved by the utility.

(2) The utility may arrange to refund all or part of a customer's payment of construction costs if additional customers are later served by the same extension or if the Area Director determines that the service will provide substantial economic benefits to the utility. All arrangements for refunds shall be stipulated in a special contract.

Subpart F—Rights-of-Way

§175.50 Obtaining rights-of-way.

Where there is no existing right(s)-of-way for the utility's facilities, the customer shall be responsible for obtaining all rights-of-way necessary to the furnishing of service.

§175.51 Ownership.

All rights-of-way, material, or equipment furnished and/or installed by a customer pursuant to this part shall be and remain the property of the United States.

Subpart G—Appeals

§175.60 Appeals to the area director.

(a) Any person adversely affected by a decision made under this part by a person under the authority of an Area Director may file a notice of appeal with the Area Director within 30 days of the personal delivery or mailing of the decision. The notice of appeal shall be in writing and shall clearly identify the decision being appealed. No extension of time shall be granted for filing a notice of appeal.

(b) Within 30 days after a notice of appeal has been filed, the appellant shall file a statement of reason(s) with the Area Director. The statement of reason(s) shall explain why the appellant believes the decision being appealed is in error, and shall include any argument(s) that the appellant wishes to make and any supporting document(s). The statement of reason(s) may be filed at the same time as the notice of appeal. If no statement of reason(s) is filed, the Area Director may summarily dismiss the appeal.

(c) Documents are properly filed with the Area Director when they are received in the facility officially designated for receipt of mail addressed to the Area Director, or in the immediate office of the Area Director.

(d) Within 30 days of filing of the statement of reason(s), the Area Director shall:

(1) Render a written decision on the appeal, or

(2) Refer the appeal to the Office of Hearings and Appeals Board of Indian Appeals for decision.

(e) Where the Area Director has not rendered a decision with 30 days of filing of the statement of reasons, the appellant may file an appeal with the Office of Hearings and Appeals Board of Indian Appeals pursuant to §175.61.

§175.61 Appeals to the Interior Board of Indian Appeals.

(a) An Area Director's decision under this part, except a decision under §175.11 or 175.13, may be appealed to the Office of Hearings and Appeals Board of Indian Appeals pursuant to the provisions of 43 CFR part 4, subpart D, except that a notice of appeal from a decision under §175.12 shall be filed within 30 days of publication of the decision. The address for the Interior Board of Indian Appeals shall be included in the operations manual.

(b) Where the Area Director determines to refer an appeal to the Office of Hearings and Appeals Board of Indian Appeals, in lieu of deciding the appeal, he/she shall be responsible for making the referral.

(c) If no appeal is timely filed with the Office of Hearings and Appeals Board of Indian Appeals, the Area Director's decision shall be final for the Department of the Interior.

§175.62 Utility actions pending the appeal process.

Pending an appeal, utility actions relating to the subject of the appeal shall be as follows:

(a) If the appeal involves discontinuance of service, the utility is not required to resume such service during the appeal process unless the customer meets the utility's requirements.

(b) If the appeal involves the amount of a bill and:

(1) The customer has paid the bill, the customer shall be deemed to have paid the bill under protest until the final decision has been rendered on the appeal; or

(2) The customer has not paid the bill and the final decision rendered in the appeal requires payment of the bill, the bill shall be handled as a delinquent account and the amount of the bill shall be subject to interest, penalties, and administrative costs pursuant to section 3 of the Federal Claims Collection Act of 1966, As amended, 31 U.S.C. 3717.

(c) If the appeal involves an electric power rate, the rate shall be implemented and remain in effect subject to the final decision on the appeal.

PART 178—RESALE OF LANDS WITHIN THE BADLANDS AIR FORCE GUNNERY RANGE (PINE RIDGE AERIAL GUNNERY RANGE)

Sec.
178.1 Purpose.
178.2 Definitions.
178.3 Eligibility to purchase.
178.4 Notice to former owners.
178.5 Special notice to former Indian owners.
178.6 Applications by former owners.
178.7 Conveyance documents.
178.8 Selection of lieu lands.
178.9 Lands formerly held subject to restrictions against alienation.

AUTHORITY: 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2; 16 U.S.C. 3; 82 Stat. 663.

SOURCE: 34 FR 9985, June 28, 1969, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 178.1 Purpose.

The regulations in this part govern the reacquisition by former Indian and non-Indian owners of lands, or interests therein, acquired by the United States of America as a part of the Badlands Air Force Gunnery Range, sometimes referred to and known as the Pine Ridge Aerial Gunnery Range. The regulations also govern the acquisition by former Indian owners of life estates in national monument lands formerly owned by them and the acquisition of lieu lands when lands formerly owned by them are not available or are not desired by them for reacquisition. The legislative authority for reacquisition of lands or interests therein by former owners is the Act of August 8, 1968 (Pub. L. 90–468; 82 Stat. 663).

§ 178.2 Definitions.

(a) ''Secretary'' means the Secretary of the Interior or his duly authorized representative.

(b) ''Superintendent'' means the officer in charge of the Pine Ridge Indian Agency, Pine Ridge, S. Dak.

(c) ''Act'' means the Act of August 8, 1968 (Pub. L. 90–468; 82 Stat. 663).

(d) ''Gunnery Range'' means the area on the Pine Ridge Indian Reservation in South Dakota that was acquired by the United States for use of the Air Force commonly known as the Pine Ridge Aerial Gunnery Range or the Badlands Air Force Gunnery Range.

(e) ''Monument'' means the Badlands National Monument as enlarged by section 1 of the Act of August 8, 1968 (Pub. L. 90–468).

(f) ''Tribe'' means the Oglala Sioux Tribe of Indians of South Dakota.

§ 178.3 Eligibility to purchase.

(a) Any former owner of a tract of land or interest in a tract of land, whether title was held in trust or in fee, which was acquired by the United States as a part of the Gunnery Range may purchase such tract pursuant to the provisions of the Act and the regulations set forth in this part: *Provided,* Said tract has been declared excess to the needs of the Department of the Air Force, has been transferred to the administrative jurisdiction of the Secretary of the Interior, and is not within the boundaries of the Monument or within that portion of the Gunnery Range retained for use of the Department of the Air Force.

(b) If a former owner is deceased and is survived by a spouse, the spouse may purchase under the same terms and conditions as the former owner except that if the former owner was an Indian whose land was held in trust and his surviving spouse is a non-Indian, the title to said tract shall be conveyed to the non-Indian spouse in a fee simple status.

(c) If the former owner is deceased and the spouse is also deceased, the children of the former owner may repurchase the tract.

(d) If the former owner is not survived by a spouse or children there exist no repurchase rights involving the tract.

(e) Not more than five former owners may join in purchasing a tract of land. ''Former owner'' means each person from whom the United States acquired an interest in a tract of land, or if such person is deceased, the surviving spouse, or if such spouse is deceased, his children. If more than five former owners apply to acquire a tract, the Superintendent shall notify them in writing that it will be necessary for

them to agree among themselves as to the five or less of them who shall acquire the tract. If agreement among the owners is obtained, those individuals who are to acquire the tract shall then file an application to purchase it. The matter of reaching agreement among the owners is the sole responsibility of said owners and not the responsibility of the Department of the Interior and/or the Bureau of Indian Affairs to participate in the negotiations between the owners. If the former owners fail to reach such an agreement, all applications for the tract shall be rejected.

§ 178.4 Notice to former owners.

After publication of these regulations, there shall be published in the FEDERAL REGISTER notice that certain described lands and interests in lands have been transferred to the administrative jurisdiction of the Secretary and are available for repurchase by the former owners pursuant to section 3(b) of the Act. Upon transfer of administrative jurisdiction over lands that may thereafter be declared excess to the needs of the Department of the Air Force and acceptance by the Secretary, notice of such transfer shall be published in the FEDERAL REGISTER. No attempt shall be made to notify each individual former non-Indian owner personally, but the transfer of jurisdiction to the Secretary may be further publicized by the publishing of notice in a local newspaper of general circulation.

§ 178.5 Special notice to former Indian owners.

(a) The Superintendent shall notify the former Indian owners, in writing, at their last known addresses of their right to repurchase the tracts formerly owned by them in those instances where the tracts are outside of the boundaries of the Monument and are outside of the boundaries of the area of the Gunnery Range retained by the Department of the Air Force. Such notice shall include (1) the legal description; (2) the purchase price thereof; (3) the minimum amount of down payment required; (4) a recital that balance of purchase price may be paid in 20 annual installments; (5) the annual rate of interest on unpaid balance; (6) information whether title is to be taken in trust or in fee; and (7) the date by which the executed application to purchase must be received in the office of the Superintendent. A form of application for execution by the former owners shall accompany said notice, said application to include the legal description of the land, purchase price and other pertinent information.

(b) In those instances where the tracts of land or portions thereof are within the boundaries of the area of the Gunnery Range retained by the Department of the Air Force, the Superintendent shall notify the former Indian owners, in writing, at their last known addresses that they may elect to purchase available tracts of land in lieu of the lands formerly owned by them, said lieu lands to be of substantially the same value as the tracts originally owned by them. Such notice shall also advise said former owners that they may, as an alternative, elect to purchase the tracts formerly owned by them at such time as the tracts may be declared excess to the needs of the Department of the Air Force and transferred to the Secretary of the Interior. As to this alternative, no promise or prediction may be made as to when, or whether, the land may eventually become surplus to the needs of the Department of the Air Force, and the notice shall specifically so state. Such notice shall include (1) the legal description of the land formerly owned by them; (2) the purchase price of the lieu land which price shall be computed on the same basis as though the original tract were available; (3) the minimum amount of down payment required; (4) a recital that balance of purchase price may be paid in 20 annual installments; (5) the annual rate of interest on unpaid balance; (6) information whether title is to be taken in trust or in fee; and (7) the date by which election to purchase lieu lands or wait until lands formerly owned by them are declared excess must be received in the office of the Superintendent. The notice shall be accompanied by a form for execution by the former owner whereby said owner elects to purchase lieu lands or to repurchase the tract formerly owned by said owner when it is declared excess.

(c) In those instances where a tract of land or portion thereof is within the boundaries of the Monument, the Superintendent shall notify the former Indian owner, in writing, at his last known address that he may elect to acquire a life estate in such tract or portion thereof at no cost but subject to the restrictions on use referred to under ''Conveyance Documents'' (§ 257.7). Such notice shall include the legal description of the lands formerly owned by him upon which he may acquire a life estate. The notice shall also inform the former owner that he may elect to purchase any available tract of land in lieu of the lands formerly owned by him, said lieu lands to have substantially the same values as the tract originally owned by him. Such notice shall include (1) the purchase price of the lieu land which price shall be computed on the same basis as though the original tract were available for purchase; (2) the minimum amount of down payment required; (3) a recital that balance of purchase price may be paid in 20 annual installments; (4) the annual rate of interest on unpaid balance; (5) information whether title is to be taken in trust or in fee; and (6) the date by which the election to acquire the life estate or lieu lands must be received in the Office of the Superintendent. Such notice shall be accompanied by a form for execution by the former owner whereby said owner elects to acquire a life estate in the lands formerly owned by said owner or elects to purchase lieu lands.

§ 178.6 Applications by former owners.

(a) Applications by former Indian owners to purchase lands formerly owned by them, or to purchase lieu lands, or to take a life estate in a tract of land within the Monument area should be made on forms furnished by the Superintendent and filed within the period specified in section 3(b) (5) of the Act. Such applications shall be filed in the Office of the Superintendent.

(b) A former non-Indian owner may file application to purchase land pursuant to section 3(b) of the Act within 1 year from the date notice is published in the FEDERAL REGISTER that the land he formerly owned has been declared excess to the needs of the Department of the Air Force and has been transferred to the Secretary. Such application shall be filed in the Office of the Superintendent. The applicant shall furnish proof of his ownership or the ownership of his predecessor in interest at the time of the acquisition of the land by the United States. Upon receipt of an application to purchase and proof of ownership the Superintendent shall cause the land to be appraised and thereafter he shall inform the applicant in writing of the fair market value of the tract which shall be the purchase price, the minimum amount of down payment required, that the balance of the purchase price may be paid in 20 annual installments, and the annual rate of interest on the unpaid balance.

§ 178.7 Conveyance documents.

(a) Where there is an election by a former Indian owner of a tract of land within the monument boundary to acquire a life estate in such tract at no cost the following types of provisions and restrictions shall be applicable to the use thereof:

(1) Agricultural uses are permitted. Only those commercial activities associated with normal agricultural operations would be allowed.

(2) Construction or reconstruction of any roads to the property, including locations and materials used, are subject to approval by the National Park Service.

(3) Mining activities of all kinds are prohibited inasmuch as the United States retains all mineral rights.

(4) Residential and other facilities necessary for, or incidental to, ranching and other agricultural purposes are permitted. This includes, but is not limited to, barns, sheds, fences, stock dams, wells utilizing surface or subsurface water, and other needed access accessory structures.

(5) The cutting of native trees, except for firewood for the personal use of the grantee, his family or assignee, is prohibited unless determined by the National Park Service to be essential to the permitted use of the tract.

(6) All improvements and structures are subject to removal upon termination of the life estate or they shall

be deemed to become the property of the United States. The family or assignee of the grantee shall have a reasonable time to vacate the premises upon termination of the life estate and may harvest annual crops planted during the tenure of the estate.

(7) Water rights owned by the United States in the premises remain vested in the United States, but the grantee has a right to reasonable use of the water.

(8) Grantee must observe and adhere to all applicable Federal, State, and local laws and regulations, including Federal laws and regulations for the protection of the black-footed ferret and other wildlife in the Monument. The United States reserves the right to enter upon the conveyed lands to assure such compliance and for the exercise of any other rights and privileges reserved to it.

(9) The conveyed premises must be kept in a neat and orderly condition and no waste or injury may be committed to the land. Pollution of water on or adjacent to the property is prohibited.

(10) Reasonable precautions must be taken to prevent, suppress, and extinguish forest, brush, grass, and other fires on the property.

(11) Grantee may not claim damages for injury by or against the United States which might be directly attributable to existence of the Monument.

(12) Other provisions deemed necessary by the National Park Service in individual circumstances may be included in the conveyance document.

(b) When title to the land being acquired is to be taken in trust for the purchaser and the purchase is effected by deferred payments as authorized in section 3(b)(2) of the Act, a sale contract shall be executed by the purchaser and the Secretary. The down payment shall be not less than $100 or 20 per centum of the purchase price, whichever is less. The purchaser shall be entitled to a credit of a pro rata share of the grazing fees collected by the United States for use of the land during the grazing year in which the sale contract is executed, which credit shall be applied as all or a part of the down payment for the land being purchased. In the event the proportionate share of the grazing fees credited to the purchaser is less than the required down payment, the purchaser shall pay the balance of the down payment in cash, or by certified check, cashier's check, money order, or U.S. Treasury check, payable to the Bureau of Indian Affairs at the time the sale contract is executed. Upon execution of the contract by the Secretary, a deed shall be prepared and executed by the Secretary conveying title to the land to the United States in trust for the purchaser. When the sale contract and deed are executed, the balance of the proportionate share of the grazing fees, if any, due the purchaser shall be paid to him and the down payment shall be deposited in the U.S. Treasury to the credit of the United States as general fund receipts. All subsequent installment payments shall be deposited in a like manner to the credit of the United States. The sale contract shall include (1) the legal description of the land; (2) the purchase price; (3) the amount of down payment; (4) the amount of annual principal installment payments; (5) the annual rate of interest on unpaid balance; (6) the due dates of annual installments; (7) a recital that the unpaid balance is a lien against the land and against all rents, bonuses and royalties received therefrom; (8) a recital that a delinquency of 90 days in making annual installment payments will subject the contract to foreclosure with loss of all payments theretofore made thereon; and (9) a recital that upon payment being made in full the deed to the United States in trust for the purchaser will be delivered to the purchaser.

(c) If title to the tract is acquired in a trust status and full payment therefor is made by the purchaser at the time the application for purchase is approved, the title shall be conveyed to the United States of America in trust for the purchaser by a deed executed by the Secretary.

(d) If the purchaser is to acquire the tract in a fee status and the purchase is effected by deferred payments as authorized in section 3(b)(2) of the Act, the title shall be conveyed to the purchaser in a fee status by a deed executed by the Secretary. The purchaser shall execute a mortgage naming the United States as mortgagee and shall

execute promissory notes for the annual installment payments with the annual rate of interest set forth therein. The deed and mortgage shall be recorded in the office of the register of deeds of the county in which the land is situated, the recording costs to be borne by the purchaser. Upon payment of the full amount of the mortgage a satisfaction of mortgage shall be executed by the Secretary and delivered to the purchaser who shall be responsible for recordation thereof in the office of the register of deeds.

(e) If the purchaser is to acquire the tract in a fee status and full payment therefor is made by the purchaser at the time the application for purchase is approved, the title shall be conveyed to said purchaser in a fee status by a deed executed by the Secretary. The purchaser shall be responsible for recordation of the deed in the office of the register of deeds of the county in which the land is situated.

(f) Each deed executed pursuant to paragraphs (c), (d), and (e) of this section shall contain a provision that if the tract is offered for sale by the purchaser within a period of 10 years from the date of said deed, the tribe shall be notified in writing that the tract is being offered for sale and of the terms of the offer and said tribe shall have a period of 60 days to exercise a right of first refusal to purchase such tract upon the terms set forth in the notice.

(g) All sale documents referred to in this section shall be recorded in the office of the Bureau of Indian Affairs having custody of the land title records of the Pine Ridge Indian Reservation pursuant to 25 CFR part 150.

§ 178.8 Selection of lieu lands.

(a) Lieu lands which may be selected for purchase by former Indian owners whose lands are within the boundaries of the area retained for use by the Department of the Air Force or are within the boundaries of the Monument are defined as (1) those lands heretofore acquired by the United States for use of the Air Force Gunnery Range which are outside the boundaries of the Monument and outside the boundaries of the area retained for use by the Department of the Air Force which are not selected for repurchase by former owners within 1 year from date of publication of the notice prescribed in section 3(b)(5) of the Act, and (2) all of the submarginal lands acquired by the United States under authority of the National Industrial Recovery Act of 1933 and subsequent relief acts, within the Pine Ridge Indian Reservation, except those submarginal lands within the area retained for use by the Department of the Air Force or within the Monument, administrative jurisdiction over which was transferred to the Secretary of the Interior by Executive Order No. 7368, dated April 15, 1938.

(b) The former Indian owners whose lands are within the boundaries of the area retained for use by the Department of the Air Force or are within the boundaries of the Monument may elect to purchase lieu lands of substantially the same value pursuant to section 4(b) and section 4(c) of the Act. Inasmuch as identification of all of the lands from which lieu selections may be made cannot be determined until the time has expired for former owners of lands outside of the area used by the Department of the Air Force and outside the boundaries of the Monument to purchase the tracts formerly owned by them, former owners who have filed an election to purchase lieu lands within 1 year from the date of publication of the notice prescribed in section 3(b)(5) of the Act, shall be deemed to have filed a timely application to purchase notwithstanding the fact that a specific tract of land has not been designated in said election.

(c) Upon the expiration of 1 year from date of publication of the notice prescribed in section 3(b)(5) of the Act, the Superintendent shall prepare a complete list of all lands available from which selections of lieu lands may be made. The Superintendent shall also prepare a list of all former owners who elected to purchase lieu lands, numbering them consecutively without regard as to date of receipt of such election. The numbers shall then be placed on separate uniform slips of paper and placed in a bowl. The numbers will then be withdrawn from the bowl and a record made of the order in which they were withdrawn. The owner of the first number withdrawn shall be afforded the first opportunity to select lieu

lands. The owners of lands represented by the following numbers will be afforded an opportunity to select lieu lands in the priority in which their numbers were drawn.

(d) When all selections of lieu lands have been made as provided in paragraph (c) of this section, the Secretary shall determine the comparability of the lands originally owned and the lieu selections. If the lieu selections are not substantially the same value as the lands originally owned, the owners shall be afforded an opportunity to make other selections which are substantially the same value.

(e) To determine whether the former Indian owned land and the selected lieu land in each case are of substantially the same value, the consideration paid by the United States for each tract may be accepted as indicative of the value of each tract at the time it was acquired. If information as to the price paid for any specific tract is not available, or if for any reason it is concluded that the consideration paid by the United States for the land is not acceptable evidence as to value for this purpose, the Secretary shall cause the tracts to be appraised to determine their comparability. The appraisals of lands shall be made on the basis of current market values. The lands shall be considered to be substantially the same value if the differences in values do not exceed 10 percent of the greater value.

§178.9 Lands formerly held subject to restrictions against alienation.

Former Indian owners who held title to the lands which were acquired for the gunnery range subject to restrictions against alienation without the approval of the Secretary of the Interior shall be conveyed title to the reacquired lands in a trust status in the same manner as though they had held trust title to the lands taken.

PART 179—LIFE ESTATES AND FUTURE INTERESTS

Sec.

179.1 Purpose, scope, and information collection.
179.2 Definitions.
179.3 Application of State law.
179.4 Distribution of principal and income.
179.5 Value of life estates and remainders.
179.6 Notice of termination of life estate.

AUTHORITY: 86 Stat. 530; 86 Stat. 744; 94 Stat. 537; 96 Stat. 2515; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201–11.

SOURCE: 53 FR 25953, July 8, 1988, unless otherwise noted.

CROSS REFERENCE: For regulations pertaining to income, rents, profits, bonuses and principal from Indian lands and the recording of title documents pertaining thereto, see parts 150, Land Records and Title Documents; 152, Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands; 162, Leasing and Permitting; 163, General Forest Regulations; 166, General Grazing Regulations; 169, Rights-of-Way over Indian Lands; 170, Roads of the Bureau of Indian Affairs; 212, Leasing of Allotted Lands for Mining; 213, Leasing of Restricted Lands of Members of the Five Civilized Tribes, Oklahoma, for Mining; 215, Lead and Zinc Mining Operations and Leases, Quapaw Agency.

§179.1 Purpose, scope, and information collection.

(a) These regulations set forth the authorities, policy and procedures governing the administration of life estates and future interests in Indian lands by the Secretary of the Interior. These regulations do not apply to any use rights assigned by tribes, in the exercise of their jurisdiction over tribal lands, to tribal members.

(b) These regulations do not contain information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

§179.2 Definitions.

''Agency'' means an Indian Agency or other field unit of the Bureau of Indian Affairs having the Indian land under its immediate jurisdiction.

''Contract Bonus'' means cash consideration paid or agreed to be paid as incentive for execution of the contract.

''Income'' means the rents and profits of real property and the interest on invested principal.

''Indian Land'' means all lands held in trust by the United States for individual Indians or tribes; or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance.

''Principal'' means the corpus and capital of an estate, including any payment received for the sale or diminishment of the corpus, as opposed to the income.

''Secretary'' means the Secretary of the Interior or authorized representative.

''Superintendent'' means the designated officer in charge of an Agency.

§ 179.3 Application of State law.

In the absence of Federal law or Federally-approved tribal law to the contrary, the rules of life estates and future interests in the State in which the land is located shall be applied on Indian land. State procedural laws concerning the appointment and duties of private trustees shall not apply.

§ 179.4 Distribution of principal and income.

In all cases where the document creating the life estate does not specify a distribution of proceeds; or where the vested remainderman and life tenant have not entered into a written agreement approved by the Secretary providing for the distribution of proceeds; or where, by such document or agreement or by the application of State law, the open mine doctrine does not apply; the Secretary shall:

(a) Distribute all rents and profits, as income, to the life tenant.

(b) Distribute any contract bonus one-half each to the life tenant and the remainderman.

(c) In the case of mineral contracts, invest the principal, with interest income to be paid the life tenant during the life estate, except in those instances where the administrative cost of investment is disproportionately high, in which case § 179.4(d) shall apply. The principal will be distributed to the remainderman upon termination of the life estate.

(d) In all other instances, distribute the principal immediately according to the formulas set forth in § 179.5, investing all proceeds attributable to any contingent remainderman in an account, with disbursement to take place upon determination of the contingent remainderman.

§ 179.5 Value of life estates and remainders.

(a) The value of a life estate shall be determined by the formula: Value of Life Estate = P × L, where P = Value of principal, and L = Life estate factor for the age and sex of the life tenant, as shown in Column 2 on Tables A(1) and A(2).

(b) The value of a remainder shall be determined by the formula: Value of Remainder = P × R, where P = Value of principal, and R = Remainder factor for the age and sex of the life tenant, as shown in Column 3 on Tables A(1) and A(2).

TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST

(1)—Age	(2)—Life estate	(3)—Remainder
0	0.9305	0.06295
1	.96217	.03783
2	.96170	.03830
3	.96053	.03947
4	.95905	.04095
5	.95732	.04268
6	.95540	.04460
7	.95331	.04669
8	.95195	.04895
9	.94861	.05139
10	.94598	.05402
11	.94316	.05684
12	.94019	.05981
13	.93708	.06292
14	.93391	.06609
15	.93069	.06931
16	.92746	.07254
17	.92419	.07581
18	.92089	.07911
19	.91751	.08249
20	.91403	.08597
21	.91046	.08954
22	.90678	.09328
23	.90292	.09702
24	.89884	.10116
25	.89445	.10555
26	.88972	.11028
27	.88465	.11535
28	.87925	.12075
29	.87353	.12647
30	.86750	.13250
31	.86117	.13883
32	.85451	.14549
33	.84752	.15248
34	.84020	.15980
35	.83255	.16745
36	.82455	.17545
37	.81622	.18378
38	.80755	.19245
39	.79854	.20146
40	.78923	.21077
41	.77960	.22040

TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Life estate	(3)—Remainder
42	.76967	.23033
43	.75944	.24056
44	.74891	.25109
45	.73808	.26192
46	.72695	.27305
47	.71552	.28448
48	.70385	.29615
49	.69198	.30802
50	.67997	.32003
51	.66785	.33215
52	.65560	.34440
53	.64320	.35680
54	.63060	.36940
55	.61776	.38224
56	.60466	.39534
57	.59131	.40869
58	.57778	.42222
59	.56417	.43583
60	.55052	.44948
61	.53687	.46313
62	.52321	.47679
63	.50954	.49046
64	.49585	.50415
65	.48212	.51788
66	.46836	.53164
67	.45458	.54542
68	.44077	.55923
69	.42689	.57311
70	.41294	.58706
71	.39889	.60111
72	.38474	.61526
73	.37051	.62949
74	.35624	.64376
75	.34194	.65806
76	.32761	.67239
77	.31327	.68673
78	.29895	.70105
79	.28481	.71519
80	.27098	.72902
81	.25773	.74227
82	.24527	.75473
83	.23354	.76646
84	.22217	.77783
85	.21070	.78930
86	.19955	.80045
87	.18870	.81130
88	.17822	.82178
89	.16831	.83169
90	.15922	.84078
91	.15097	.84903
92	.14350	.85650
93	.13681	.86319
94	.13081	.86919
95	.12535	.87465
96	.11998	.88002
97	.11487	.88513
98	.10999	.89001
99	.10532	.89468
100	.10087	.89913
101	.09661	.90339
102	.09250	.90750
103	.08846	.91154

TABLE A(1)—SINGLE LIFE MALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Life estate	(3)—Remainder
104	.08439	.91561
105	.08000	.92000
106	.07471	.92529
107	.06718	.93282
108	.05426	.94574
109	.02830	.97170

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST

(1)—Age	(2)—Life estate	(3)—Remainder
0	0.95383	0.04617
1	.97370	.02630
2	.97372	.02628
3	.97308	.02692
4	.97217	.02783
5	.97110	.02890
6	.96989	.03011
7	.96853	.03147
8	.96703	.03297
9	.96541	.03459
10	.96365	.03635
11	.96176	.03824
12	.95975	.04025
13	.95764	.04236
14	.95543	.04457
15	.95314	.04686
16	.95076	.04924
17	.94829	.05171
18	.94572	.05428
19	.94303	.05697
20	.94021	.05979
21	.93724	.06276
22	.93412	.06588
23	.93085	.06915
24	.92739	.07261
25	.92375	.07625
26	.91993	.08007
27	.91591	.08409
28	.91168	.08832
29	.90725	.09275
30	.90259	.09741
31	.89773	.10227
32	.89265	.10735
33	.88733	.11267
34	.88176	.11824
35	.87593	.12407
36	.86985	.13015
37	.86349	.13651
38	.85687	.14313
39	.84998	.15002
40	.84281	.15719
41	.83536	.16464
42	.82764	.17236
43	.81962	.18038
44	.81131	.18869
45	.80269	.19731
46	.79374	.20626

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Life estate	(3)—Remainder
47	.78448	.21552
48	.77488	.22512
49	.76498	.23502
50	.75476	.24524
51	.74423	.25577
52	.73339	.26661
53	.72220	.27780
54	.71062	.28938
55	.69859	.30141
56	.68612	.31388
57	.67320	.32680
58	.65988	.34012
59	.64622	.35378
60	.63226	.36774
61	.61803	.38197
62	.60352	.39648
63	.58871	.41129
64	.57355	.42645
65	.55803	.44197
66	.54211	.45789
67	.52583	.47417
68	.50924	.49076
69	.49241	.50759
70	.47540	.52460
71	.45823	.54177
72	.44088	.55912
73	.42341	.57659
74	.40587	.59413
75	.38833	.61167
76	.37073	.62927
77	.35307	.64693
78	.33546	.66454
79	.31811	.68189
80	.30117	.69883
81	.28489	.71511
82	.26935	.73065
83	.25439	.74561
84	.23956	.76044
85	.22441	.77559
86	.21010	.78990

TABLE A(2)—SINGLE LIFE FEMALE, 6 PERCENT, SHOWING THE PRESENT WORTH OF A LIFE ESTATE INTEREST, AND OF A REMAINDER INTEREST—Continued

(1)—Age	(2)—Life estate	(3)—Remainder
87	.19674	.80326
88	.18431	.81569
89	.17285	.82715
90	.16241	.83759
91	.15301	.84699
92	.14470	.85530
93	.13741	.86259
94	.13103	.86897
95	.12535	.87465
96	.11998	.88002
97	.11487	.88513
98	.10999	.89001
99	.10532	.89468
100	.10087	.89913
101	.09661	.90339
102	.09250	.90750
103	.08846	.91154
104	.08439	.91561
105	.08000	.92000
106	.07471	.92529
107	.06718	.93282
108	.05426	.94574
109	.02830	.97170

§ 179.6 Notice of termination of life estate.

Upon receipt of a renunciation of interest or notice of death of an Indian or non-Indian who died possessed of a life estate in Indian land, the Superintendent having jurisdiction shall file a copy of the renunciation or death certificate or other evidence of death with the appropriate Bureau of Indian Affairs' Land Titles and Records Office for recording.

SUBCHAPTER I—ENERGY AND MINERALS

PART 200—TERMS AND CONDITIONS: COAL LEASES

Sec.
200.1—200.10 [Reserved]
200.11 Incorporation of coal lease terms and conditions.
200.12 Contract term incorporation.

AUTHORITY: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), as amended.

SOURCE: 54 FR 22188, May 22, 1989, unless otherwise noted.

§§200.1—200.10 [Reserved]

§200.11 Incorporation of coal lease terms and conditions.

(a) All leases of coal on Indian lands, as defined in §216.101 of this chapter, issued by the Secretary, will include at the time of issuance, renewal, renegotiation, or readjustment, as applicable, the following provision:

The Lessee shall comply with all applicable requirements of the Surface Mining Control and Reclamation Act of 1977, and all regulations promulgated thereunder, including those codified at 30 CFR part 750.

(b) With respect to leases of coal on Indian lands issued by the Secretary after August 3, 1977, the Secretary shall, at the time of issuance, renewal, renegotiation, or readjustment, as applicable, include and enforce in such leases, terms and conditions related to the Surface Mining Control and Reclamation Act of 1977, as requested by the lessor Indian tribe in writing.

§200.12 Contract term incorporation.

The requirements of 30 CFR Part 750 shall be incorporated in all existing and new contracts entered into for coal mining on Indian lands.

[59 FR 43419, Aug. 23, 1994]

PART 211—LEASING OF TRIBAL LANDS FOR MINERAL DEVELOPMENT

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AUTHORITY: Sec. 4, Act of May 11, 1938, (52 Stat. 347): Act of August 1, 1956 (70 Stat. 774): 25 U.S.C. 396a-g; and 25 U.S.C. 2 and 9.

SOURCE: 61 FR 35653, July 8, 1996, unless otherwise noted.

Subpart A—General

§ 211.1 Purpose and scope.

(a) The regulations in this part govern leases and permits for the development of Indian tribal oil and gas, geothermal, and solid mineral resources except as provided under paragraph (e) of this section. These regulations are applicable to lands or interests in lands the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. These regulations are intended to ensure that Indian mineral owners desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental impacts or cultural impacts resulting from such development.

(b) The regulations in this part shall be subject to amendment at any time by the Secretary of the Interior. No regulation that becomes effective after the date of approval of any lease or permit shall operate to affect the duration of the lease or permit, rate of royalty, rental, or acreage unless agreed to by all parties to the lease or permit.

(c) The regulations of the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service that are referenced in §§ 211.4, 211.5, and 211.6 are supplemental to the regulations in this part, and apply to parties holding leases or permits for development of Indian mineral resources unless specifically stated otherwise in this part or in such other Federal regulations.

(d) Nothing in the regulations in this part is intended to prevent Indian tribes from exercising their lawful governmental authority to regulate the conduct of persons, businesses, operations or mining within their territorial jurisdiction.

(e) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR Parts 213 (Members of the Five Civilized Tribes of Oklahoma), 226 (Osage), or 227 (Wind River Reservation).

§ 211.2 Information collection.

The information collection requirements contained in this part do not require a review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501; et seq.).

§ 211.3 Definitions.

As used in this part, the following words and phrases have the specified meaning except where otherwise indicated:

Applicant means any person seeking a permit, lease, or an assignment from the superintendent or area director.

Approving official means the Bureau of Indians Affairs official with delegated authority to approve a lease or permit.

Area director means the Bureau of Indian Affairs official in charge of an area office.

Authorized officer means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described in this part and in 43 CFR Parts 3160, 3180, 3260, 3280, 3480 and 3590.

Cooperative agreement means a binding arrangement between two or more parties purporting to the act of agreeing or of coming to a mutual arrangement that is accepted by all parties to a transaction (e.g., communitization and unitization).

Director's representative means the Office of Surface Mining Reclamation and Enforcement director's representative authorized by law or lawful delegation of authority to perform the duties described in 30 CFR part 750.

Gas means any fluid, either combustible or non-combustible, that is produced in a natural state from the earth and that maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

Geological and geophysical permit means a written authorization to conduct on-site surveys to locate potential deposits of oil and gas, geothermal or solid mineral resources on the lands.

Geothermal resources means:

(1) All products of geothermal processes, including indigenous steam, hot water and hot brines;

(2) Steam and other gases, hot water, and hot brines, resulting from water, gas or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any by-product derived therefrom.

In the best interest of the Indian mineral owner refers to the standards to be applied by the Secretary in considering whether to take an administrative action affecting the interests of an Indian mineral owner. In considering whether it is ''in the best interest of the Indian mineral owner'' to take a certain action (such as approval of a lease, permit, unitization or communitization agreement), the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease expiration; probable financial effect on the Indian mineral owner; leasability of land concerned; need for change in the terms of the existing lease; marketability; and potential environmental, social, and cultural effects.

Indian lands means any lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other tribal group which owns land or interests in the land, the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

Indian mineral owner means an Indian tribe, band, nation, pueblo community, rancheria, colony, or other tribal group which owns mineral interests in oil and gas, geothermal or solid mineral resources, title to which is held in trust by the United States, or is subject to a restriction against alienation imposed by the United States.

Indian surface owner means any individual Indian or Indian tribe whose surface estate is held in trust by the United States, or is subject to restriction against alienation imposed by the United States.

Lease means any contract approved by the United States under the Act of May 11, 1938 (52 Stat. 347) (25 U.S.C. 396a–396g), as amended, that authorizes exploration for, extraction of, or removal of any minerals.

Lessee means a natural person, proprietorship, partnership, corporation, or other entity that has entered into a lease with an Indian mineral owner, or who has been assigned an obligation to make royalty or other payments required by the lease.

Lessor means an Indian mineral owner who is a party to a lease.

Minerals includes both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil and gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral.

Minerals Management Service official means any employee of the Minerals Management Service (MMS) authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR chapter II, subchapters A and C.

Mining means the science, technique, and business of mineral development including, but not limited to: opencast work, underground work, and in-situ leaching directed to severance and treatment of minerals; Provided, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered ''mining'' only if the extraction of such a mineral exceeds 5,000 cubic yards in any given year.

Oil means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process.

Permit means any contract issued by the superintendent and/or area director to conduct exploration on; or removal of less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

Permittee means a person holding or required by this part to hold a permit to conduct exploration operations on; or remove less than 5,000 cubic yards

per year of common varieties of minerals from Indian lands.

Secretary means the Secretary of the Interior or an authorized representative.

Solid minerals means all minerals excluding oil, gas and geothermal resources.

Superintendent means the Bureau of Indian Affairs official in charge of the agency office having jurisdiction over the minerals subject to leasing under this part.

§ 211.4 Authority and responsibility of the Bureau of Land Management (BLM).

The functions of the Bureau of Land Management are found in 43 CFR part 3160—Onshore Oil and Gas Operations, 43 CFR part 3180—Onshore Oil and Gas Unit Agreements: Unproven Area, 43 CFR part 3260—Geothermal Resources Operations, 43 CFR part 3280—Geothermal Resources Unit Agreements: Unproven Areas, 43 CFR part 3480—Coal Exploration and Mining Operations, and 43 CFR part 3590—Solid Minerals (other than coal) Exploration and Mining Operations; and currently include, but are not limited to, resource evaluation, approval of drilling permits, mining and reclamation, production plans, mineral appraisals, inspection and enforcement, and production verification. These regulations, apply to leases and permits approved under this part.

§ 211.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSM).

The OSM is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.). The relevant regulations for surface coal mining and reclamation operations are found in 30 CFR part 750. Those regulations apply to mining and reclamation on leases approved under this part.

§ 211.6 Authority and responsibility of the Minerals Management Service (MMS).

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II, subchapters A and C, which, apply to leases approved under this part. To the extent the parties to a lease or permit are able to provide reasonable provisions satisfactorily addressing the functions governed by MMS regulations, the Secretary may approve alternate provisions in a lease or permit.

§ 211.7 Environmental studies.

(a) The Secretary shall ensure that all environmental studies are prepared as required by the National Environmental Policy Act of 1969 (NEPA) and the regulations promulgated by the Council on Environmental Quality (CEQ), found in 40 CFR parts 1500 through 1508.

(b) The Secretary shall ensure that all necessary surveys are performed and clearances obtained in accordance with 36 CFR parts 60, 63, and 800 and with the requirements of the Archaeological and Historic Preservation Act (16 U.S.C. 469 et seq.), the National Historic Preservation Act (16 U.S.C. 470 et seq.), The American Indian Religious Freedom Act (42 U.S.C. 1996), and Executive Order 11593, Protection and Enhancement of the Cultural Environment (3 CFR, 1971 through 1975 Comp., p. 559). If these surveys indicate that a mineral development will have an adverse effect on a property listed on or eligible for listing on the National Register of Historic Places, the Secretary shall:

(1) Seek the comments of the Advisory Council on Historic Preservation, in accordance with 36 CFR part 800;

(2) Ensure that the property is avoided, that the adverse effect is mitigated, or;

(3) Ensure that appropriate excavations or other related research is conducted and ensure that complete data describing the historic property is preserved.

§ 211.8 Government employees cannot acquire leases.

U.S. Government employees are prevented from acquiring leases or interests in leases by the provisions of 25 CFR part 140 and 43 CFR part 20 pertaining to conflicts of interest and ownership of an interest in trust land.

§ 211.9 Existing permits or leases for minerals issued pursuant to 43 CFR chapter II and acquired for Indian tribes.

(a) Title to the minerals underlying certain Federal lands, which were previously subject to general leasing and mining laws, is now held in trust by the United States for Indian tribes. Existing mineral prospecting permits, exploration and mining leases on these lands, issued prior to these lands being placed in trust status or becoming Indian lands, pursuant to 43 CFR chapter II (and its predecessor regulations), and all actions on the permits and leases shall be administered by the Secretary in accordance with the regulations set forth in 30 CFR chapters II and VII and 43 CFR chapter II, as applicable, provided, that all payment or reports required by a non-producing lease or permit, issued pursuant to 43 CFR chapter II, shall be made to the superintendent having administrative jurisdiction over the land involved, instead of the officer of the Bureau of Land Management designated in 43 CFR unless specifically stated otherwise in the statutes authorizing the United States to hold the land in trust for an Indian tribe. Producing lease payments and reports will be submitted to the Minerals Management Service in accordance with 30 CFR chapter II, subchapters A and C.

(b) Administrative actions regarding an existing lease or permit under this section, may be appealed pursuant to 25 CFR part 2.

Subpart B—How to Acquire Leases

§ 211.20 Leasing procedures.

(a) Indian mineral owners may, with the approval of the superintendent or area director, lease their land for mining purposes. No oil and gas lease shall be approved unless it has first been offered for bidding at an advertised lease sale in accordance with this section. Leases for minerals other than oil and gas shall be advertised for bids as prescribed in this section unless the Secretary grants the Indian mineral owners written permission to negotiate for lease. Application for leases shall be made to the superintendent having jurisdiction over the lands.

(b) Indian mineral owners may request that the Secretary prepare and advertise or negotiate (if the requirements of this section have been met) mineral leases on their behalf. If requested by an applicant interested in acquiring rights to Indian-owned minerals, the Secretary shall promptly notify the Indian mineral owner, and advise the owner in writing of the alternatives available, including the right to decline to lease. If the Indian mineral owner decides to have the leases advertised, the Secretary shall consult with the Indian mineral owner concerning the appropriate royalty rate and rental. The Secretary may then undertake the responsibility to advertise and lease in accordance with the following procedures:

(1) Leases shall be advertised to receive optimum competition for bonus consideration, under sealed bid, oral auction, or a combination of both. Notice of such advertisement shall be published in at least one local newspaper and in one trade publication at least thirty (30) days in advance of sale. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific description of such tracts shall be available at the office of the superintendent and/or area director upon request. The complete text of the advertisement, including a specific description, shall be mailed to each person listed on the appropriate agency or area mailing list. Individuals and companies interested in receiving advertisements of lease sales should send their mailing information to the appropriate superintendent or area director for future reference.

(2) The advertisement shall offer the tracts to the responsible bidder offering the highest bonus. The Secretary, after consultation with the Indian mineral owner, shall establish the rental and royalty rates which shall be stated in the advertisement and shall not be subject to negotiation. The advertisement shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by the Indian mineral owner is required.

(3) Each sealed bid must be accompanied by a cashier's check, certified check or postal money order, or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which shall be returned if that bid is not accepted.

(4) A successful oral auction bidder will be allowed five (5) working days to remit the required 25 percent deposit of the bonus bid.

(5) A successful bidder shall, within thirty (30) days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a $75 filing fee, its prorated share of the advertising costs as determined by the Bureau of Indian Affairs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time. However, for good reasons, the Secretary may grant extensions of time in thirty (30) day increments for filing of the lease and all required bonds, provided that additional extension requests are submitted and approved prior to the expiration of the original thirty (30) days or the previously granted extension. Failure on the part of the bidder to take all reasonable actions necessary to comply with the foregoing shall result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(6) If no satisfactory bid is received, or if the accepted bidder fails to complete all requirements necessary for the approval of the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept any of the bids the Secretary may re-advertise the lease for sale, or, subject to the consent of the Indian mineral owner, the lease may be let through private negotiations.

(c) The Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not approve the lease until the consent of the Indian mineral owner has been obtained.

(d) The Indian mineral owner may also submit negotiated leases to the Secretary for review and approval.

§ 211.21 [Reserved]

§ 211.22 Leases for subsurface storage of oil or gas.

(a) The Secretary, with the consent of the Indian mineral owners, may approve storage leases, or modifications, amendments, or extensions of existing leases, on Indian lands to provide for the subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The storage lease, or modification, amendment, or extension to an existing lease, shall provide for the payment of such storage fee or rental on such oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the oil and gas lease when such stored oil and gas is produced in conjunction with oil or gas not previously produced.

(b) The Secretary, with consent of the Indian mineral owners, may approve a provision in an oil and gas lease under which storage of oil and gas is authorized, for continuance of the lease at least for the period of such storage use and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(c) Applications for subsurface storage of oil or gas shall be filed in triplicate with the authorized officer and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage, and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the Indian mineral owners and other parties in interest shall be submitted for the approval of the Secretary to permit retention of five copies by the Department after approval.

§ 211.23 Corporate qualifications and requests for information.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, mineral leases, or assignments, bonds, or other instruments required by the regulations in this part constitutes certification that the individual signing (except a surety agent) is authorized to act in such capacity. An agent for a

surety shall furnish a power of attorney.

(b) A corporate applicant proposing to acquire an interest in a permit or lease shall have on file with the superintendent or area director a statement showing:

(1) The State(s) in which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated; and

(2) A notarized statement that the corporation has power to conduct all business and operations as described in the lease or permit.

(c) The Secretary may, either before or after the approval of a permit, mineral lease, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, or other applicable laws and regulations.

§ 211.24 Bonds.

(a) The lessee, permittee or prospective lessee acquiring a lease, or any interest therein, by assignment shall furnish with each lease, permit or assignment a surety bond or personal bond in an amount sufficient to ensure compliance with all of the terms and conditions of the lease(s), permit(s), or assignment(s) and the statutes and regulations applicable to the lease, permit, or assignment. Surety bonds shall be issued by a qualified company approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(b) An operator may file a $75,000 bond for all geothermal, mining, or oil and gas leases, permits, or assignments in any one State, which may also include areas on that part of an Indian reservation extending into any contiguous State. Statewide bonds are subject to approval in the discretion of the Secretary.

(c) An operator may file a $150,000 bond for full nationwide coverage to cover all geothermal or oil and gas leases, permits, or assignments without geographic or acreage limitation to which the operator is or may become a party. Nationwide bonds are subject to approval in the discretion of the Secretary.

(d) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the provisions and conditions of the lease or permit. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the provisions and conditions of a lease or permit; or

(5) Letter of credit issued by a financial institution authorized to do business in the United States and whose deposits are federally insured, and identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the provisions and conditions of a lease or permit.

(i) The letter of credit shall be irrevocable during its term.

(ii) The letter of credit shall be payable to the Bureau of Indian Affairs upon demand, in part or in full, upon receipt from the Secretary of a notice of attachment stating the basis thereof (e.g., default in compliance with the lease or permit provisions and conditions or failure to file a replacement in accordance with paragraph (d)(5)(v) of this section).

(iii) The initial expiration date of the letter of credit shall be at least one (1) year following the date it is filed in the proper Bureau of Indian Affairs office.

(iv) The letter of credit shall contain a provision for automatic renewal for periods of not less than one (1) year in the absence of notice to the proper Bureau of Indian Affairs office at least ninety (90) days prior to the originally stated or any extended expiration date.

(v) A letter of credit used as security for any lease or permit upon which operations have taken place and final approval for abandonment has not been given, or as security for a statewide or nationwide bond, shall be forfeited and shall be collected by the Secretary if not replaced by other suitable bond or letter of credit at least thirty (30) days before its expiration date.

(e) The required amount of bonds may be increased in any particular case at the discretion of the Secretary.

§ 211.25 Acreage limitation.

A lessee may acquire more than one lease but no single lease shall be granted for mineral leasing purposes on Indian tribal or restricted lands in excess of the following acreage except where the rule of approximation applies:

(a) Leases for oil and gas and all other minerals except coal are to be contained within one United States Governmental survey section of land and shall be described by legal subdivisions including lots or tract equivalents not to exceed 640 acres; in instances of irregular surveys, including lands not surveyed under the United States Governmental survey, lands shall be considered in multiples of 40 acres or the nearest aliquot equivalent thereof;

(b) Leases for coal shall ordinarily be limited to 2,560 acres in a reasonably compact form and shall be described by legal subdivisions including lots or tract equivalents. In instances of irregular surveys, including lands not surveyed under the United States Governmental survey, lands shall be considered in multiples of 40 acres or the nearest aliquot equivalent thereof. The Secretary may, upon application and with the consent of the Indian mineral owner, approve the issuance of a single lease for more than 2,560 acres, in a reasonably compact form, upon a finding that the issuance is in the best interest of the lessor.

§ 211.26 [Reserved]

§ 211.27 Duration of leases.

(a) All leases shall be for a term not to exceed a primary term of lease duration of ten (10) years and, absent specific lease provisions to the contrary, shall continue as long thereafter as the minerals specified in the lease are produced in paying quantities. Absent specific lease provisions to the contrary, all provisions in leases governing their duration shall be measured from the date of approval by the Secretary.

(b) An oil and gas or geothermal resource lease which stipulates that it shall continue in full force and effect beyond the expiration of the primary term of lease duration (''commencement clause'') if drilling operations have commenced during the primary term, shall be valid and shall hold the lease beyond the primary term of lease duration if the lessee or the lessee's designee has commenced actual drilling by midnight of the last day of the primary term of the lease with a drilling rig designed to reach the total proposed depth, and drilling is continued with reasonable diligence until the well is completed to production or abandoned. However, in no case shall such drilling hold the lease longer than 120 days past the primary term of lease duration without actual production of oil, gas, or geothermal resources. *Provided,* that this extension does not allow a lease to continue past the 10-year statutory limitation. Drilling which meets the requirements of this section and occurs within a unit or communitization agreement to which the lease is committed shall be considered as if it occurs on the leasehold itself. If there is a conflict between the commencement clause and the habendum clause of a lease, the commencement clause will control.

(c) A solid minerals lease which stipulates that it shall continue in full force and effect beyond the expiration of the primary term of lease duration if mining operations have commenced during the primary term (commencement clause), shall be valid and hold the lease beyond the primary term of lease duration if the lessee or the lessee's designee has by midnight of the last day of the primary term of the lease commenced actual removal of mineral materials intended for sale and upon which royalties will be paid. If there is a conflict between the commencement clause and the habendum clause of a lease, the commencement clause will control.

§ 211.28 Unitization and communitization agreements, and well spacing.

(a) For the purpose of promoting conservation and efficient utilization of minerals, the Secretary may approve a cooperative unit, drilling or other development plan on any leased area upon a determination that approval is advisable and in the best interest of the Indian mineral owner. For the purposes of this section, a cooperative unit, drilling or other development plan means an agreement for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the agreement. Such cooperative agreements include, but are not limited to, unit agreements, communitization agreements and other types of agreements that allocate costs and benefits.

(b) The consent of the Indian mineral owner to such unit or cooperative agreement shall not be required unless such consent is specifically required in the lease. However, the Secretary shall consult with the Indian mineral owner prior to making a determination concerning a cooperative agreement or well spacing plan.

(c) Requests for approval of cooperative agreements which comply with the requirements of all applicable rules and regulations shall be filed with the superintendent or area director.

(d) All Indian mineral owners of any right, title or interest in the mineral resources to be included in a cooperative agreement must be notified by the lessee at the time the agreement is submitted to the superintendent or area director. An affidavit from the lessee stating that a notice was mailed to each mineral owner of record for whom the superintendent or area director has an address will satisfy this notice requirement.

(e) A request for approval of a proposed cooperative agreement, and all documents incident to such agreement, must be filed with the superintendent or area director at least ninety (90) days prior to the first expiration date of any of the Indian leases in the area proposed to be covered by the cooperative agreement.

(f) Unless otherwise provided in the cooperative agreement, approval of the agreement commits each lease to the unit in the area covered by the agreement on the date approved by the Secretary or the date of first production, whichever is earlier, as long as the agreement is approved before the lease expiration date.

(g) Any lease committed in part to any such cooperative agreement shall be segregated into a separate lease or leases as to the lands committed and lands not committed to the agreement. Segregation shall be effective on the date the agreement is effective.

(h) Wells shall be drilled in conformity with a well spacing program approved by the authorized officer.

§ 211.29 Exemption of leases and permits made by organized tribes.

The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461–479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362,258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501–509), or by ordinance, resolution, or other action authorized under such constitution, bylaw or charter; Provided, that such tribal law may not supersede the requirements of Federal statutes applicable to Indian mineral leases. The regulations in this part, in so far as they are not so superseded, shall apply to leases and permits made by organized tribes if the validity of the lease or permit depends upon the approval of the Secretary of the Interior.

Subpart C—Rents, Royalties, Cancellations and Appeals

§ 211.40 Manner of payments.

Unless otherwise specifically provided for in a lease, once production has been established, all payments shall be made to the MMS or such other party as may be designated, and shall be made at such time as provided in 30 CFR chapter II, subchapters A and C. Prior to production, all bonus and rental payments, shall be made to the superintendent or area director.

§ 211.41 Rentals and production royalty on oil and gas leases.

(a) A lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of $2.00 per acre or fraction of an acre or such other greater amount as prescribed in the lease. This rental shall not be credited against production royalty nor shall the rental be prorated or refunded because of surrender or cancellation.

(b) The Secretary shall not approve leases with a royalty rate less than 16–⅔ percent of the amount or value of production produced and sold from the lease unless a lower royalty rate is agreed to by the Indian mineral owner and is found to be in the best interest of the Indian mineral owner. Such approval may only be granted by the area director if the approving official is the superintendent and by the Assistant Secretary for Indian Affairs if the approving official is the area director.

(c) Value of lease production for royalty purposes shall be determined in accordance with applicable lease provisions and regulations in 30 CFR chapter II, subchapters A and C. If the valuation provisions in the lease are inconsistent with the regulations in 30 CFR chapter II, subchapters A and C, the lease provisions shall govern.

(d) If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, then the lessor may use sufficient gas, free of charge, for any desired school or other buildings belonging to the tribe, by making his own connections to a regulator installed, connected to the well and maintained by the lessee, and the lessee shall not be required to pay royalty on gas so used. The use of such gas shall be at the lessor's risk at all times.

§ 211.42 Annual rentals and expenditures for development on leases other than oil and gas, and geothermal resources.

(a) Unless otherwise authorized by the Secretary, a lease for minerals other than oil, gas and geothermal resources shall provide for a yearly development expenditure of not less than $20 per acre. All such leases shall provide for a rental payment of not less than $2.00 for each acre or fraction of an acre payable on or before the first day of each lease year.

(b) Within twenty (20) days after the lease year, an itemized statement, in duplicate, of the expenditure for development under a lease for minerals other than oil and gas shall be filed with the superintendent or area director. The lessee must certify the statement under oath.

§ 211.43 Royalty rates for minerals other than oil and gas.

(a) Except as provided in paragraph (b) of this section, the minimum rates for leases of minerals other than oil and gas shall be as follows:

(1) For substances other than coal, the royalty rate shall be 10 percent of the value of production produced and sold from the lease at the nearest shipping point.

(2) For coal to be strip or open pit mined the royalty rate shall be 12½ percent of the value of production produced and sold from the lease, and for coal removed from an underground mine, the royalty rate shall be 8 percent of the value of production produced and sold from the lease.

(3) For geothermal resources, the royalty rate shall be 10 percent of the amount or value of steam, or any other form of heat or energy derived from production of geothermal resources under the lease and sold or utilized by the lessee. In addition, the royalty rate shall be 5 percent of the value of any byproduct derived from production of geothermal resources under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, except that the royalty for any mineral byproduct shall be governed by the appropriate paragraph of this section.

(b) A lower royalty rate shall be allowed if it is determined to be in the best interest of the Indian mineral owner. Approval of a lower rate may only be granted by the area director if the approving official is the superintendent or by the Assistant Secretary for Indian Affairs, if the approving official is the area director.

§ 211.44 Suspension of operations.

(a) After the expiration of the primary term of the lease the Secretary may approve suspension of operations for remedial purposes which are necessary for continued production, to protect the resource, the environment, or for other good reasons. *Provided*, that such remedial operations are conducted in accordance with 43 CFR part 3160, subpart 3165 and under such stipulations and conditions as may be prescribed by the Secretary and are conducted with reasonable diligence. Any suspension shall not relieve the lessee from liability for the payment of rental and other payments as required by lease provisions.

(b) An application for permission to suspend operations or production for economic or marketing reasons on a lease capable of production after the expiration of the primary term of lease duration must be accompanied by the written consent of the Indian mineral owner, an economic analysis, and an executed amendment by the parties to the lease setting forth the provisions pertaining to the suspension of operations and production. Such application shall be treated as a negotiated change to lease provisions, and as such, shall be subject to review and approval by the Secretary.

§ 211.45 [Reserved]

§ 211.46 Inspection of premises, books and accounts.

Lessees shall allow the Indian mineral owner, the Indian mineral owner's representatives, or any authorized representative of the Secretary to enter all parts of the leased premises for the purpose of inspection and audit. Lessees shall keep a full and correct account of all operations and submit all related reports required by the lease and applicable regulations. Books and records shall be available for inspection during regular business hours.

§ 211.47 Diligence, drainage and prevention of waste.

The lessee shall:

(a) Exercise diligence in mining, drilling and operating wells on the leased lands while minerals production can be secured in paying quantities;

(b) Protect the lease from drainage (if oil and gas or geothermal resources are being drained from the lease premises by a well or wells located on lands not included in the lease, the Secretary reserves the right to impose reasonable and equitable terms and conditions to protect the interest of the Indian mineral owner of the lands, such as payment of compensatory royalty for the drainage);

(c) Carry on operations in a good and workmanlike manner in accordance with approved methods and practices;

(d) Have due regard for the prevention of waste of oil or gas or other minerals, the entrance of water through wells drilled by the lessee to other strata, to the destruction or injury of the oil or gas, other mineral deposits, or fresh water aquifers, the preservation and conservation of the property for future productive operations, and the health and safety of workmen and employees;

(e) Securely plug all wells and effectively shut off all water from the oil or gas-bearing strata before abandoning them;

(f) Not construct any well pad location within 200 feet of any structures or improvements without the Indian surface owner's written consent;

(g) Carry out, at the lessee's expense, all reasonable orders and requirements of the authorized officer relative to prevention of waste;

(h) Bury all pipelines crossing tillable lands below plow depth unless other arrangements are made with the Indian surface owner; and

(i) Pay the Indian surface owner all damages, including damages to crops, buildings, and other improvements of the Indian surface owner occasioned by the lessee's operations as determined by the superintendent.

§ 211.48 Permission to start operations.

(a) No exploration, drilling, or mining operations are permitted on any Indian lands before the Secretary has granted written approval of a mineral lease or permit pursuant to the regulations in this part.

(b) After a lease or permit is approved, written permission must be secured from the Secretary before any

operations are started on the leased premises, in accordance with applicable rules and regulations in 25 CFR part 216; 30 CFR chapter II, subchapters A and C; 30 CFR part 750 (Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands), 43 CFR parts 3160, 3260, 3480, 3590, and Orders or Notices to Lessees (NTLs) issued thereunder.

§ 211.49 Restrictions on operations.

Leases issued under the provisions of the regulations in this part shall be subject to such restrictions as to time or times for well operations and production from any leased premises as the Secretary judges may be necessary or proper for the protection of the natural resources of the leased land and in the interest of the lessor.

§ 211.50 [Reserved]

§ 211.51 Surrender of leases.

A lessee may, with the approval of the Secretary, surrender a lease or any part of it, on the following conditions:

(a) All royalties and rentals due on the date the request for surrender is received must be paid;

(b) The superintendent, after consultation with the authorized officer, must be satisfied that proper provisions have been made for the conservation and protection of the property, and that all operations on the portion of the lease surrendered have been properly reclaimed, abandoned, or conditioned, as required;

(c) If a lease has been recorded, the lessee must submit a release along with the recording information of the original lease so that, after acceptance of the release, it may be recorded;

(d) If a lessee requests to surrender an entire lease or an entire undivided portion of a lease document, the lessee must deliver to the superintendent or area director the original lease documents; *Provided*, that where the request is made by an assignee to whom no copy of the lease was delivered, the assignee must deliver to the superintendent or area director only its copy of the assignment;

(e) If the lease (or a portion thereof being surrendered) is owned in undivided interests, all lessees owning undivided interests in the lease must join in the request for surrender;

(f) No part of any advance rental shall be refunded to the lessee, nor shall any subsequent surrender or termination of a lease relieve the lessee of the obligation to pay advance rental if advance rental became due prior to the date the request for surrender was received by the superintendent or area director;

(g) If oil, gas, or geothermal resources are being drained from the leased premises by a well or wells located on lands not included in the lease, the Secretary reserves the right, prior to acceptance of the surrender, to impose reasonable and equitable terms and conditions to protect the interests of the Indian mineral owners of the lands surrendered. Such terms and conditions may include payment of compensatory royalty for any drainage; and

(h) Upon expiration or surrender of a solid mineral lease the lessee shall deliver the leased premises in a condition conforming to the approved reclamation plan. Unless otherwise provided in the lease, the machinery necessary to operate the mine is the property of the lessee. However, the machinery may not be removed from the leased premises without the written permission of the Secretary.

§ 211.52 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment, thereof shall be accompanied by a filing fee of $75.00 at the time of filing.

§ 211.53 Assignments, overriding royalties, and operating agreements.

(a) Approved leases or any interest therein may be assigned or transferred only with the approval of the Secretary. The Indian mineral owner must also consent if approval of the Indian mineral owner is required in the lease. If consent is not required, then the Secretary shall notify the Indian mineral owner of the proposed assignment. To obtain the approval of the Secretary the assignee must be qualified to hold the lease under existing rules and regulations and shall furnish a satisfactory bond conditioned for the

faithful performance of the covenants and conditions of the lease.

(b) No lease or interest therein or the use of such lease shall be assigned, sublet, or transferred, directly or indirectly, by working or drilling contract, or otherwise, without the consent of the Secretary.

(c) Assignments of leases, and stipulations modifying the provisions of existing leases, which stipulations are also subject to the approval of the Secretary, shall be filed with the superintendent within five (5) working days after the date of execution. Upon execution of satisfactory bonds by the assignee the Secretary may permit the release of any bonds executed by the assignor. Upon execution of satisfactory bonds the assignee accepts all the assignor's responsibilities and prior obligations and liabilities of the assignor (including but not limited to any underpaid royalties and rentals) under the lease.

(d) Agreements creating overriding royalties or payments out of production shall not be considered as interests in the leases as such provision is used in this section. Agreements creating overriding royalties or payments out of production, or agreements designating operators are hereby authorized and the approval of the Secretary shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in such agreements shall be construed as modifying any of the obligations of the lessee, including, but not limited to, obligations imposed by requirements of the MMS for reporting, accounting, and auditing; obligations for diligent development and operation, protection against drainage and mining in trespass, compliance with oil and gas, geothermal, and mining regulations (25 CFR part 216; 43 CFR parts 3160, 3260, 3480, and 3590; and those applicable rules found in 30 CFR chapter II, subchapters A and C) and the requirements for Secretarial approval before abandonment of any oil and gas or geothermal well or mining operation. All such obligations are to remain in full force and effect, the same as if free of any such overriding royalties or payments. The existence of agreements creating overriding royalties or payments out of production, whether or not actually paid, shall not be considered as justification for the approval of abandonment of any oil and gas or geothermal well or mining operation. Nothing in this paragraph revokes the requirement for approval of assignments and other instruments which is required in this section, but any overriding royalties or payments out of production created by the provisions of such assignments or instruments shall be subject to the condition stated in this section. Agreements creating overriding royalties or payments out of production, or agreements designating operators shall be filed with the superintendent unless incorporated in assignments or instruments required to be filed pursuant to this section.

§ 211.54 Lease or permit cancellation; Bureau of Indian Affairs notice of noncompliance.

(a) If the Secretary determines that a permittee or lessee has failed to comply with the terms of the permit or lease; the regulations in this part; or other applicable laws or regulations; the Secretary may:

(1) Serve a notice of noncompliance specifying in what respect the permittee or lessee has failed to comply with the requirements referenced in this paragraph, and specifying what actions, if any, must be taken to correct the noncompliance; or

(2) Serve a notice of proposed cancellation of the lease or permit. The notice of proposed cancellation shall set forth the reasons why lease or permit cancellation is proposed and shall specify what actions, if any, must be taken to avoid cancellation.

(b) The notice of noncompliance or proposed cancellation shall specify in what respect the permittee or lessee has failed to comply with the requirements referenced in paragraph (a), and shall specify what actions, if any, must be taken to correct the noncompliance.

(c) The notice shall be served upon the permittee or lessee by delivery in person or by certified mail to the permittee or lessee at the permittee's or lessee's last known address. When certified mail is used, the date of service shall be deemed to be when the notice is received or five (5) working days

after the date it is mailed, whichever is earlier.

(d) The lessee or permittee shall have thirty (30) days (or such longer time as specified in the notice) from the date that the notice is served to respond, in writing, to the official or the Bureau of Indian Affairs office that issued the notice.

(e) If a permittee or lessee fails to take any action that is prescribed in the notice of proposed cancellation, fails to file a timely written response to the notice, or files a written response that does not, in the discretion of the Secretary, adequately justify the permittee's or lessee's actions, then the Secretary may cancel the lease or permit, specifying the basis for the cancellation.

(f) If a permittee or lessee fails to take corrective action or to file a timely written response adequately justifying the permittee's or lessee's actions pursuant to a notice of noncompliance, the Secretary may issue an order of cessation of operations. If the permittee or lessee fails to comply with the order of cessation, or fails to timely file an appeal of the order of cessation pursuant to paragraph (h), the Secretary may issue an order of lease or permit cancellation.

(g) Cancellation of a lease or permit shall not relieve the lessee or permittee of any continuing obligations under the lease or permit.

(h) Orders of cessation or of lease or permit cancellation issued pursuant to this section may be appealed under 25 CFR part 2.

(i) This section does not limit any other remedies of the Indian mineral owner as set forth in the lease or permit.

(j) Nothing in this section is intended to limit the authority of the authorized officer or the MMS official to take any enforcement action authorized pursuant to statute or regulation.

(k) The authorized officer, MMS official, and the superintendent and/or area director should consult with one another before taking any enforcement actions.

§ 211.55 Penalties.

(a) In addition to or in lieu of cancellation under § 211.54, violations of the terms and conditions of any lease, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued by the Secretary, or, in the case of solid minerals the authorized officer, may subject a lessee or permittee to a penalty of not more than $1,000 per day for each day that such a violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of a proposed penalty shall be served on the lessee or permittee either personally or by certified mail to the lessee or permittee at the lessee's or permittee's last known address. The date of service by certified mail shall be deemed to be the date when received or five (5) working days after the date mailed, whichever is earlier.

(c) The notice shall specify the nature of the violation and the proposed penalty, and shall specifically advise the lessee or permittee of the lessee's or permittee's right to either request a hearing within thirty (30) days from receipt of the notice or pay the proposed penalty. Hearings shall be held before the superintendent and/or area director whose findings shall be conclusive, unless an appeal is taken pursuant to 25 CFR part 2.

(d) If the lessee or permittee served with a notice of proposed penalty requests a hearing, penalties shall accrue each day the violations or noncompliance set forth in the notice continue beyond the time limits prescribed for corrective action. The Secretary may issue a written suspension of the requirement to correct the violations pending completion of the hearings provided by this section only upon a determination, at the discretion of the Secretary, that such a suspension will not be detrimental to the lessor and upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage. The amount of the bond must be sufficient to cover the cost of correcting the violations set forth in the notice or any disputed amounts plus accrued penalties and interest.

(e) Payment in full of penalties more than ten (10) days after a final decision imposing a penalty shall subject the

lessee or permittee to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the Secretary. In the absence of a specific lease provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under §6621(a)(2) of the Internal Revenue Code of 1954. Interest shall be charged only on the amount of payment not received and only for the number of days the payment is late.

(f) None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the authorized officer, the director's representative or the MMS official to impose penalties for violations of applicable regulations pursuant to 43 CFR part 3160, and 43 CFR Groups 3400 and 3500, 30 CFR part 750, or 30 CFR chapter II, subchapters A and C;

(2) Replacing or superseding any penalty provision in the terms and conditions of a lease or permit approved by the Secretary pursuant to this part; or

(3) Authorizing the imposition of a penalty for violations of lease or permit terms for which the authorized officer, director's representative or MMS official, have either statutory or regulatory authority to assess a penalty.

§ 211.56 Geological and geophysical permits.

Permits to conduct geological and geophysical operations on Indian lands which do not conflict with any mineral leases entered into pursuant to this part, may be approved by the Secretary with the consent of the Indian mineral owner under the following conditions:

(a) The permit must describe the area to be explored, the duration, and the consideration to be paid the Indian owner;

(b) The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production of, or removal of oil and gas, geothermal resources, or other minerals, except samples for assay and experimental purposes, unless specifically so stated in the permit; and

(c) Copies of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and the Indian mineral owner, unless otherwise provided in the permit. Data collected under a permit may be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may release such information after six (6) years, with the consent of the Indian mineral owner.

§ 211.57 Forms.

Leases, bonds, permits, assignments, and other instruments relating to mineral leasing shall be on forms, prescribed by the Secretary, that may be obtained from the superintendent or area director. The provisions of a standard lease or permit may be changed, deleted, or added to by written agreement of all parties with the approval of the Secretary.

§ 211.58 Appeals.

Appeals from decisions of Bureau of Indian Affairs officers under this part may be taken pursuant to 25 CFR part 2.

PART 212—LEASING OF ALLOTTED LANDS FOR MINERAL DEVELOPMENT

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212.58 Appeals.

AUTHORITY: Act of March 3, 1909, (35 Stat. 783; 25 U.S.C. 396 (as amended)): Act of May 11, 1938, (Sec. 2, 52 Stat. 347; 25 U.S.C. 396 b-g: Act of August 1, 1956, (70 Stat. 774)); and 25 U.S.C. 2 and 9.

SOURCE: 61 FR 35661, July 8, 1996, unless otherwise noted.

Subpart A—General

§ 212.1 Purpose and scope.

(a) The regulations in this part govern leases for the development of individual Indian oil and gas, geothermal and solid mineral resources. These regulations are applicable to lands or interests in lands the title to which is held, for any individual Indian, in trust by the United States or is subject to restriction against alienation imposed by the United States. These regulations are intended to ensure that Indian mineral owners desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests and minimizes any adverse environmental impacts or cultural impacts resulting from such development.

(b) The regulations in this part shall be subject to amendment at any time by the Secretary of the Interior. No regulation that becomes effective after the date of approval of any lease or permit shall operate to affect the duration of the lease or permit, rate of royalty, rental, or acreage unless agreed to by all parties to the lease or permit.

(c) Nothing in the regulations in this part is intended to prevent Indian tribes from exercising their lawful governmental authority to regulate the conduct of persons, businesses, operations or mining within their territorial jurisdiction.

(d) The regulations of the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service that are referenced in §§212.4, 212.5, and 212.6 of this part are supplemental to these regulations, and apply to parties holding leases or permits for development of Indian mineral resources unless specifically stated otherwise in this part or in such other Federal regulations.

(e) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR part 213 (Members of the Five Civilized Tribes of Oklahoma), 226 (Osage), or 227 (Wind River Reservation).

§ 212.2 Information collection.

The information collection requirements contained in this part do not require a review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501; et seq.).

§ 212.3 Definitions.

As used in this part, the following words and phrases have the specified

meaning except where otherwise indicated:

Applicant means any person seeking a permit, lease, or an assignment from the superintendent or area director.

Approving official means the Bureau of Indian Affairs official with delegated authority to approve a lease or permit.

Area director means the Bureau of Indian Affairs official in charge of an area office.

Authorized officer means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described herein and in 43 CFR parts 3160, 3180, 3260, 3280, 3480, and 3590.

Cooperative agreement means a binding arrangement between two or more parties purporting to the act of agreeing or of coming to a mutual arrangement that is accepted by all parties to a transaction (e.g., communitization and unitization).

Director's representative means the Office of Surface Mining Reclamation and Enforcement director's representative authorized by law or lawful delegation of authority to perform the duties described in 30 CFR part 750.

Gas means any fluid, either combustible or non-combustible, that is produced in a natural state from the earth and that maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

Geological and geophysical permit means a written authorization to conduct on-site surveys to locate potential deposits of oil and gas, geothermal or solid mineral resources on the lands.

Geothermal resources means:

(1) All products of geothermal processes, including indigenous steam, hot water and hot brines;

(2) Steam and other gases, hot water, and hot brines, resulting from water, gas or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any by-product derived therefrom.

In the best interest of the Indian mineral owner refers to the standards to be applied by the Secretary in considering whether to take an administrative action affecting the interests of an Indian mineral owner. In considering whether it is ''in the best interest of the Indian mineral owner'' to take a certain action (such as approval of a lease, permit, unitization or communitization agreement), the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease expiration; probable financial effect on the Indian mineral owner; leasability of land concerned; need for change in the terms of the existing lease; marketability; and potential environmental, social, and cultural effects.

Indian lands means any lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other tribal group which owns lands or interest in the minerals, the title to which is held in trust by the United States or is subject to restriction against alienation imposed by the United States.

Indian mineral owner means any individual Indian or Alaska Native who owns mineral interests in oil and gas, geothermal, or solid mineral resources, title to which is held in trust by the United States, or is subject to the restriction against alienation imposed by the United States.

Indian surface owner means any individual Indian or Indian tribe whose surface estate is held in trust by the United States, or is subject to restriction against alienation imposed by the United States.

Lease means any contract, approved by the Secretary of the Interior under the Act of March 3, 1909 (35 Stat. 783)(25 U.S.C. 396), as amended, and the Act of May 11, 1938 (52 Stat. 347) (25 U.S.C. 396a–396g), as amended, that authorize exploration for, extraction of, or removal of any minerals.

Lessee means a natural person, proprietorship, partnership, corporation, or other entity which has entered into a lease with an Indian mineral owner, or who has been assigned an obligation to make royalty or other payments required by the lease.

Lessor means an Indian mineral owner who is a party to a lease.

Minerals includes both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil, gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited

to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral.

Minerals Management Service official means any employee of the Minerals Management Service (MMS) authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR chapter II, subchapters A and C.

Mining means the science, technique, and business of mineral development including, but not limited to: opencast work, underground work, and in-situ leaching directed to severance and treatment of minerals; *Provided*, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered ''mining'' only if the extraction of such a mineral exceeds 5,000 cubic yards in any given year.

Oil means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process.

Permit means any contract issued by the superintendent and/or area director to conduct exploration on; or removal of less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

Permittee means a person holding or required by this part to hold a permit to conduct exploration operations on; or remove less than 5,000 cubic yards per year of common varieties of minerals from Indian lands.

Secretary means the Secretary of the Interior or an authorized representative.

Solid minerals means all minerals excluding oil and gas and geothermal resources.

Superintendent means the Bureau of Indian Affairs official in charge of the agency office having jurisdiction over the minerals subject to leasing under this part.

§ 212.4 Authority and responsibility of the Bureau of Land Management (BLM).

The functions of the Bureau of Land Management are found in 43 CFR Part 3160—Onshore Oil and Gas Operations, 43 CFR Part 3180—Onshore Oil and Gas Unit Agreements: Unproven Area, 43 CFR Part 3260—Geothermal Resources Operations, 43 CFR Part 3280—Geothermal Resources Unit Agreements: Unproven Areas, 43 CFR Part 3480—Coal Exploration and Mining Operations, and 43 CFR Part 3590—Solid Minerals (Other Than Coal) Exploration and Mining Operations, and currently include, but are not limited to, resource evaluation, approval of drilling permits, mining and reclamation, production plans, mineral appraisals, inspection and enforcement, and production verification. Those regulations, apply to leases or permits issued under this part.

§ 212.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSM).

The OSM is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.). The relevant regulations for surface coal mining and reclamation operations are found in 30 CFR part 750. Those regulations apply to mining and reclamation on leases issued under this part.

§ 212.6 Authority and responsibility of the Minerals Management Service (MMS).

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II, subchapters A and C, which apply to leases approved under this part. To the extent the parties to a lease or permit are able to provide reasonable provisions satisfactorily addressing the functions governed by MMS regulations, the Secretary may approve alternate provisions in a lease or permit.

§ 212.7 Environmental studies.

The provisions of § 211.7 of this subchapter, as amended, are applicable to leases under this part.

§ 212.8 Government employees cannot acquire leases.

U.S. Government employees are prevented from acquiring leases or interests in leases by the provisions of 25 CFR part 140 and 43 CFR part 20 pertaining to conflicts of interest and ownership of an interest in trust land.

Subpart B—How to Acquire Leases

§ 212.20 Leasing procedures.

(a) Application for leases shall be made to the superintendent having jurisdiction over the lands.

(b) Indian mineral owners may request the Secretary to prepare, advertise and negotiate mineral leases on their behalf. Leases for minerals shall be advertised for bids as prescribed in this section unless one or more of the Indian mineral owners of a tract sought for lease request the Secretary to negotiate for a lease on their behalf without advertising. Unless the Secretary decides that negotiation of a mineral lease is in the best interests of the Indian mineral owners, he shall use the following procedure for leasing:

(1) Leases shall be advertised to receive optimum competition for bonus consideration, under sealed bid, oral auction, or a combination of both. Notice of such advertisement shall be published in at least one local newspaper and in one trade publication at least thirty (30) days in advance of sale. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific description of such tracts shall be available at the office of the superintendent and/or area director upon request. The complete text of the advertisement, including a specific description, shall be mailed to each person listed on the appropriate agency or area mailing list. Individuals and companies interested in receiving advertisements on lease sales should send their mailing information to the appropriate agency or area office for future reference.

(2) The advertisement shall offer the tracts to a responsible bidder offering the highest bonus. The Secretary shall establish the rental and royalty rates which shall be stated in the advertisement and will not be subject to negotiation. The advertisement shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on behalf of the Indian mineral owner is required. The requirements under § 212.21 are applicable to the acceptance of a lease bid.

(3) Each sealed bid must be accompanied by a cashier's check, certified check or postal money order, or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which shall be returned if that bid is not accepted.

(4) A successful oral auction bidder will be allowed five (5) working days to remit the required 25 percent deposit of the bonus bid.

(5) A successful bidder shall, within thirty (30) days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a $75 filing fee, its prorated share of the advertising costs as determined by the Bureau of Indian Affairs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form, signed by the Indian mineral owner(s), at that time. However, for good reasons, the Secretary may grant extensions of time in thirty (30) day increments for filing of the lease and all required bonds, provided that additional extension requests are submitted and approved prior to the expiration of the original thirty (30) days or the previously granted extension. Failure on the part of the bidder to take all reasonable actions necessary to comply with the foregoing shall result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(6) If no satisfactory bid is received, or if the accepted bidder fails to complete all requirements necessary for approval of the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept any of the bids the Secretary may re-advertise the tract for sale, or subject to the consent of the Indian mineral owner, a lease may be let through private negotiations.

(c) The Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not approve the lease until the consent of the Indian mineral owner has been obtained. The requirements under § 212.21 are applicable to the approval of a mineral lease.

§ 212.21 Execution of leases.

(a) The Secretary shall not execute a mineral lease on behalf of an Indian mineral owner, except when such owner is deceased and the heirs to or devisee of the estate have not been determined, or if determined, some or all of them cannot be located. Leases involving such interests may be executed by the Secretary, provided that the mineral interest shall have been offered for sale under the provisions of section 212.20(b) (1) through (6).

(b) The Secretary may execute leases on behalf of minors and persons who are incompetent by reason of mental incapacity; *Provided,* that there is no parent, guardian, conservator, or other person who has lawful authority to execute a lease on behalf of the minor or person with mental incapacity.

(c) If an owner is a life tenant, the procedures set forth in 25 CFR part 179 (Life Estates and Future Interests), shall apply.

§ 212.22 Leases for subsurface storage of oil or gas.

The provisions of § 211.22 of this subchapter are applicable to leases under this part.

§ 212.23 Corporate qualifications and requests for information.

The provisions of § 211.23 of this subchapter are applicable to leases under this part.

§ 212.24 Bonds.

The provisions of § 211.24 of this subchapter are applicable to leases under this part.

§ 212.25 Acreage limitation.

The provisions of § 211.25 of this subchapter are applicable to leases under this part.

§ 212.26 [Reserved]

§ 212.27 Duration of leases.

The provisions of § 211.27 of this subchapter are applicable to leases under this part.

§ 212.28 Unitization and communitization agreements, and well spacing.

(a) For the purpose of promoting conservation and efficient utilization of minerals, the Secretary may approve a cooperative unit, drilling or other development plan on any leased area upon a determination that approval is advisable and in the best interest of the Indian mineral owner. For the purposes of this section, a cooperative unit, drilling or other development plan means an agreement for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the agreement. Such cooperative agreements include, but are not limited to, unit agreements, communitization agreements and other types of agreements that allocate costs and benefits.

(b) The consent of the Indian mineral owner to such unit or cooperative agreement shall not be required unless such consent is specifically required in the lease.

(c) Requests for approval of cooperative agreements which comply with the requirements of all applicable rules and regulations shall be filed with the superintendent or area director.

(d) All Indian mineral owners of any right, title or interest in the mineral resources to be included in a cooperative agreement must be notified by the lessee at the time the agreement is submitted to the superintendent or area director. An affidavit from the lessee stating that a notice was mailed to each mineral owner of record for whom the superintendent or area director has an address will satisfy this notice requirement.

(e) A request for approval of a proposed cooperative agreement, and all documents incident to such agreement, must be filed with the superintendent or area director at least ninety (90) days prior to the first expiration date of any of the Indian leases in the area

proposed to be covered by the cooperative agreement.

(f) Unless otherwise provided in the cooperative agreement, approval of the agreement commits each lease to the unit in the area covered by the agreement on the date approved by the Secretary or the date of first production, whichever is earlier, as long as the agreement is approved before the lease expiration date.

(g) Any lease committed in part to any such cooperative agreement shall be segregated into a separate lease or leases as to the lands committed and lands not committed to the agreement. Segregation shall be effective on the date the agreement is effective.

(h) Wells shall be drilled in conformity with a well spacing program approved by the authorized officer.

§ 212.29 [Reserved]

§ 212.30 Removal of restrictions.

(a) Notwithstanding the provisions of any mineral lease to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the lease. Thereafter, all payments required to be made under the lease shall be made directly to the owner(s).

(b) In the event restrictions are removed from a part of the land included in any lease approved by the Secretary, the entire lease shall continue to be subject to the supervision of the Secretary until such times as the holder of the lease and the unrestricted Indian owner submits to the Secretary satisfactory evidence that adequate arrangements have been made to account for the mineral resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from the supervision of the Secretary, the lease, the regulations of this part, and all other applicable laws and regulations.

§§ 212.31–212.32 [Reserved]

§ 212.33 Terms applying after relinquishment.

All leases for individual Indian lands approved by the Secretary under this part shall contain provisions for the relinquishment of supervision and provide for operations of the lease after such relinquishment. These leases shall contain provisions that address the following issues:

(a) *Provisions of relinquishment.* If the Secretary relinquishes supervision at any time during the life of the lease instrument as to all or part of the acreage subject to the lease, the Secretary shall give the Indian mineral owner and the lessee thirty (30) days written notice prior to the termination of supervision. After notice of relinquishment has been given to the lessee, the lease shall be subject to the following conditions:

(1) All rentals and royalties thereafter accruing shall be paid directly to the lessor or the lessor's successors in title, or to a trustee appointed under the provisions of paragraph (b) of this section.

(2) If, at the time supervision is relinquished by the Secretary, the lessee has made all payments then due and has fully performed all obligations on the lessee's part to be performed up to the time of such relinquishment, the bond given to secure the performance of the lease, on file in the appropriate agency or area office, shall be of no further force or effect.

(3) Should relinquishment affect only part of the lease, then the lessee may continue to conduct operations on the land covered by the lease as an entirety; *Provided,* that the lessee shall pay, in the manner prescribed by the lease and regulations for the benefit of lessor, the same proportion of all rentals and royalties due under the provisions of this part as the acreage retained under the supervision of the Secretary bears to the entire acreage of the lessee, and shall pay the remainder of the rentals and royalties directly to the remaining lessors or successors in title or said trustee as the case may be, as provided in paragraph (a) (1) of this section.

(b) *Division of fee.* If, after the execution of the lease and after the Secretary relinquishes supervision thereof, the fee of the leased land is divided into separate parcels held by different

owners, or if the rental or royalty interest is divided in ownership, the obligations of the lessee shall not be modified in any manner except as specifically provided by the provisions of the lease. Notwithstanding such separate ownership, the lessee may continue to conduct operations on said premises as an entirety. Each separate owner shall receive such proportion of all rental and royalties accruing after the vesting of its title as the acreage of the fee, or rental or royalty interest, bears to the entire acreage covered by the lease; or to the entire rental or royalty interest as the case may be. If at any time after departmental supervision of the lease is relinquished, in whole or in part, to rentals and royalties, whether said parties are so entitled by virtue of undivided interest or by virtue of ownership of separate parcels of the land covered, the lessee may elect to withhold the payment of further rentals or royalties (except as the portion due the Indian lessor while under restriction), until all of said parties shall agree upon and designate a trustee in writing and in a recordable instrument to receive all payments due thereunder on behalf of said parties and their respective successors in title. Payments to said trustee shall constitute lawful payments, and the sole risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their said respective successors in title.

§ 212.34 Individual tribal assignments excluded.

The reference in this part to Indian mineral owners does not include assignments of tribal lands made pursuant to tribal constitutions or ordinances for the use of individual Indians and assignees of such lands.

Subpart C—Rents, Royalties, Cancellations, and Appeals

§ 212.40 Manner of payments.

The provisions of § 211.40 of this subchapter are applicable to leases under this part.

§ 212.41 Rentals and production royalty on oil and gas leases.

(a) A lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of $2.00 per acre or fraction of an acre or such other greater amount as prescribed in the lease. This rental shall not be credited against production royalty nor shall the rental be prorated or refunded because of surrender or cancellation.

(b) The Secretary shall not approve leases with a royalty rate less than 16–⅔ percent of the amount or value of production produced and sold from the lease unless a lower royalty rate is agreed to by the Indian mineral owner and is found to be in the best interest of the Indian mineral owner. Such approval may only be granted by the area director if the approving official is the superintendent and the Assistant Secretary for Indian Affairs if the approving official is the area director.

(c) Value of lease production for royalty purposes shall be determined in accordance with applicable lease provisions and regulations in 30 CFR chapter II, subchapters A and C. If the valuation provisions in the lease are inconsistent with the regulations in 30 CFR chapter II, subchapters A and C, the lease provisions shall govern.

§ 212.42 Annual rentals and expenditures for development on leases other than oil and gas, and geothermal resources.

The provisions of § 211.42 of this subchapter are applicable to leases under this part.

§ 212.43 Royalty rates for minerals other than oil and gas.

The provisions of § 211.43 of this subchapter are applicable to leases under this part.

§ 212.44 Suspension of operations.

The provisions of § 211.44 of this subchapter are applicable to leases under this part.

§ 212.45 [Reserved]

§ 212.46 Inspection of premises, books, and accounts.

The provisions of § 211.46 of this subchapter are applicable to leases under this part.

§ 212.47 Diligence, drainage and prevention of waste.

The provisions of § 211.47 of this subchapter are applicable to leases under this part.

§ 212.48 Permission to start operations.

The provisions of § 211.48 of this subchapter are applicable to leases under this part.

§ 212.49 Restrictions on operations.

The provisions of § 211.49 of this subchapter are applicable to leases under this part.

§ 212.50 [Reserved]

§ 212.51 Surrender of leases.

The provisions of § 211.51 of this subchapter are applicable to leases under this part.

§ 212.52 Fees.

The provisions of § 211.52 of this subchapter are applicable to leases under this part.

§ 212.53 Assignments, overriding royalties, and operating agreements.

The provisions of § 211.53 of this subchapter are applicable to leases under this part.

§ 212.54 Lease or permit cancellation; Bureau of Indian Affairs notice of noncompliance.

The provisions of § 211.54 of this subchapter are applicable to leases under this part.

§ 212.55 Penalties.

The provisions of § 211.55 of this subchapter are applicable to this part.

§ 212.56 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian lands which do not conflict with any mineral lease entered into pursuant to this part may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(1) The permit must describe the area to be explored, the duration and the consideration to be paid the Indian owner;

(2) The permit may not grant the permittee any option or preference rights to a lease or other development contract, authorize the production of, or removal of oil and gas, or geothermal resources, or other minerals except samples for assay and experimental purposes, unless specifically so stated in the permit; and

(3) Copies of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian mineral owner, unless otherwise provided in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may, in the discretion of the Secretary, release such information after six (6) years.

(b) A permit may be granted by the Secretary without 100 percent consent of the individual mineral owners if:

(1) The minerals are owned by more than one person, and the owners of a majority of the interest therein consent to the permit;

(2) The whereabouts of one or more owners of the minerals or an interest therein is unknown, and all the remaining owners of the interests consent to the permit;

(3) The heirs or devisee of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(4) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain their consent, and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(c) A lessee does not need a permit to conduct geological and geophysical operations on Indian lands, if provided for

in the lessee's mineral lease, where the Indian mineral owner is also the surface land owner. In instances where the Indian mineral owner is not the surface owner, the lessee must obtain any additional necessary permits or rights of ingress or egress from the surface occupant.

§ 212.57 Forms.

The provisions of § 211.57 of this subchapter are applicable to leases under this part.

§ 212.58 Appeals.

The provisions of § 211.58 of this subchapter are applicable to leases under this part.

PART 213—LEASING OF RESTRICTED LANDS OF MEMBERS OF FIVE CIVILIZED TRIBES, OKLAHOMA, FOR MINING

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AUTHORITY: Sec. 2, 35 Stat. 312, sec. 18, 41 Stat. 426, sec. 1, 45 Stat. 495, sec. 1, 47 Stat. 777; 25 U.S.C. 356. Interpret or apply secs. 3, 11, 35 Stat. 313, 316, sec. 8, 47 Stat. 779, unless otherwise noted.

SOURCE: 22 FR 10599, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

CROSS REFERENCE: For oil and gas operating regulations of the Geological Survey, see 30 CFR part 221.

§ 213.1 Definitions.

Area Director. The term ''Area Director'' in this part refers to the officer in charge of the Five Civilized Tribes Indian Agency.

Supervisor. The term ''supervisor'' in this part refers to a representative of

the Secretary of the Interior under direction of the Director of the U.S. Geological Survey, authorized and empowered to supervise and direct operations under oil and gas or other mining leases, to furnish scientific and technical information and advice, to ascertain and record the amount and value of production, and to determine and record rentals and royalties due and paid.

HOW TO ACQUIRE LEASES

§ 213.2 Applications for leases.

Applications for leases should be made to the Area Director.

§ 213.3 No Government employee shall acquire leases.

No lease, assignment thereof, or interest therein will be approved to any employee or employees of the U.S. Government, whether connected with the Bureau of Indian Affairs or otherwise, and no employee of the Department of the Interior shall be permitted to acquire any interest in such leases covering restricted Indian lands by ownership of stock in corporations having leases or in any other manner.

(R.S. 2078; 25 U.S.C. 68)

§ 213.4 Sale of oil and gas leases.

(a) At such times and in such manner as he may deem appropriate, the Area Director shall publish notices at least thirty days prior to the sale, unless a shorter period is authorized by the Commissioner of Indian Affairs, that oil and gas leases on specific tracts, each of which shall be in a reasonably compact body, will be offered to the highest responsible bidder for a bonus consideration, in addition to stipulated rentals and royalties. Each bid must be accompanied by a cashier's check, certified check, or postal money order, payable to the payee designated in the invitation to bid, in an amount not less than 25 percent of the bonus bid. Within 30 days after notification of being the successful bidder, said bidder must remit the balance of the bonus, the first year's rental, and his share of the advertising costs, and shall file with the Area Director the lease in completed form. The Area Director may, for good and sufficient reasons, extend the time for the completion and submission of the lease form, but no extension shall be granted for remitting the balance of monies due. If the successful bidder fails to pay the full consideration within said period, or fails to file the completed lease within said period or extension thereof, or if the lease is disapproved through no fault of the lessor or the Department of the Interior, 25 percent of the bonus bid will be forfeited for the use and benefit of the Indian lessor.

(b) In cases where any part of the bonus bid for a lease is paid directly to the Indian lessor, upon his signing the lease, the lessee must procure and file with the lease an affidavit of the lessor, sworn to before a U.S. Commissioner, Postmaster, Area Director, local representative of the Area Director, county or district judge, Federal judge or clerk of a Federal court, showing the amount of bonus so paid, and the balance thereof must be paid into the office of the Area Director upon filing the lease. Where possible lessees are requested to take the lessor to the nearest United States field clerk who will render all proper assistance in the execution of leases, and before whom the bonus affidavit may be executed in cases where any part of bonus consideration is paid directly to the lessor. Where leases are executed by guardians, under order of court, the affidavit of lessor may be executed before a notary public.

(c) All notices or advertisements of sales of oil and gas leases shall reserve to the Secretary of the Interior the right to reject all bids when in his judgment the interests of the Indians will be best served by so doing, and that if no satisfactory bid is received, or if the accepted bidder fails to complete the lease or if the Secretary of the Interior shall determine that it is unwise in the interests of the Indians to accept the highest bid, the Secretary may readvertise such lease for sale, or if deemed advisable, with the consent of the Indian owners, a lease may be made by private negotiations. The successful bidder or bidders will be required to pay his or their share of the advertising costs. Amounts received from unsuccessful bidders will be returned; but when no bid is accepted on

a tract, the costs of advertising will be assessed against the applicant who requested that said tract be advertised.

(Secs. 16, 17, 48 Stat. 987, 988, sec. 9, 49 Stat. 1968, sec. 4, 52 Stat. 348; 25 U.S.C. 396d, 476, 477, 509)

§ 213.5 Term of oil and gas leases.

Oil and gas mining leases which require the approval of the Secretary of the Interior may be made for periods of 10 years from the date of approval of lease by the Secretary of the Interior and as much longer thereafter as oil and/or gas is produced in paying quantities.

§ 213.6 Leases for minerals other than oil and gas.

Uncontested mining leases for minerals other than oil and gas shall be made on forms[1] prescribed by the Department, for a period of 15 years with the right of renewal on such terms as the superintendent may prescribe, and shall be subject only to approval by the Area Director. See provisions of the act of February 14, 1920 (41 Stat. 408). Any persons aggrieved by any decision or order of the Area Director approving, rejecting, or disapproving any such lease may appeal from the same to the Secretary of the Interior within 30 days from the date of such decision or order.

§ 213.7 Fees.

The provisions of § 211.25 of this chapter, or as hereafter amended, are applicable to this part.

[24 FR 7949, Oct. 2, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 213.8 Filing of lease deemed constructive notice.

The filing of any lease in the office of the Area Director shall be deemed constructive notice of the existence of such lease. See act of March 1, 1907.

(34 Stat. 1026)

§ 213.9 Noncontiguous tracts.

No lease will be approved covering two or more noncontiguous tracts of land, but in such case a lease must be executed on each separate tract.

[1] For further information regarding forms, see § 211.30.

§ 213.10 Lessor's signature.

Any Indian who cannot write his name will be required to sign all official papers by making a distinct thumbprint which shall be designated as ''right'' or ''left'' thumbmark. Such signatures must be witnessed by two persons, one of whom must be a U.S. Government employee (such as field clerk, postmaster, U.S. Commissioner, etc.).

§ 213.11 Minor lessors.

Where the lessor is a minor, certified copies of letters of guardianship and court orders approving leases must be filed.

§ 213.12 Leases executed by guardians of minors.

Leases executed by guardians of minors under order of court for a period extending beyond the minority of the minor will be approved unless it appears that such action would be prejudicial to the interests of the minor: *Provided,* That in the event the minor becomes of age within 1 year from the date of execution of lease the consent of the minor to the execution of the lease should be obtained and submitted with the lease for consideration.

§ 213.13 Inherited lands.

Except to prevent loss or waste, leases on undivided inherited lands will not be approved until the heirship determination has been approved. If the heirs to undivided inherited lands are undetermined or cannot be located, or if the heirs owning less than one-half interest in the lands refuse to sign a lease and it appears necessary to lease the lands to prevent loss or waste, the Area Director will report the facts to the Commissioner of Indian Affairs and ask for instructions. Minor heirs can lease or joint adult heirs in leasing only through guardians under order of court. Proof of heirship shall be given upon Form F prescribed. If probate or other court proceedings have established the heirship in any case, or the land has been partitioned, certified copy of final order, judgment, or decree of the court will be accepted in lieu of Form F.

§ 213.14 Corporations and corporate information.

If the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute papers; and with its first application it shall also file a certified copy of its articles of incorporation, and, if foreign to the State in which the lands are located, evidence showing compliance with the corporation laws thereof. Statements of changes in officers and stockholders shall be furnished by a corporation lessee to the Area Director January 1 of each year, and at such other times as may be requested.

Whenever deemed advisable in any case the Area Director may require a corporation applicant or lessee to file:

(a) List of officers, principal stockholders, and directors, with post office addresses and numbers of shares held by each.

(b) A sworn statement of the proper officer showing:

(1) The total number of shares of the capital stock actually issued and the amount of cash paid into the treasury on each share sold; or, if paid in property, the kind of quantity and value of the same paid per share.

(2) Of the stock sold, how much remains unpaid and subject to assessment.

(3) The amount of cash the company has in its treasury and elsewhere.

(4) The property, exclusive of cash, owned by the company and its value.

(5) The total indebtedness of the company and the nature of its obligations.

(6) Whether the applicant or any person controlling, controlled by or under common control with the applicant has filed any registration statement, application for registration, prospectus or offering sheet with the Securities and Exchange Commission pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934 or said Commission's rules and regulations under said acts; if so, under what provision of said acts or rules and regulations; and what disposition of any such statement, application, prospectus or offering sheet has been made.

(c) Affidavits of individual stockholders, setting forth in what corporations, or with what persons, firms, or associations such individual stockholders are interested in mining leases on restricted lands within the State, and whether they hold such interest for themselves or in trust.

CROSS REFERENCE: For regulations of the Securities and Exchange Commission, see 17 CFR chapter II.

§ 213.15 Bonds.

(a) Lessee shall furnish with each mining lease a bond (Form 5–154b), and an assignee of a lease shall furnish with each assignment a bond (Form 5–154m), with an acceptable company authorized to act as sole surety, or with two or more personal sureties and a deposit as collateral security of any public-debt obligations of the United States guaranteed as to principal and interest by the United States, equal to the full amount of such bonds, or other collateral satisfactory to the Secretary of the Interior, or show ownership of unencumbered real estate of the value equal to twice the amount of the bonds. Lessee may file a bond on Form 5–154a without sureties and a deposit as collateral security of Government bonds equal in value to the full amount of the bond. Lease bonds, except as provided in paragraph (c) of this section, shall not be less than the following amounts:

For less than 80 acres	$1,000
For 80 acres and less than 120 acres	1,500
For 120 acres and not more than 160 acres	2,000
For each additional 40 acres, or part thereof, above 160 acres	500

Provided, That for leases for minerals other than oil and gas the Secretary of the Interior or his authorized representative with the consent of the Indian landowner may authorize a bond for a lesser amount if, in his opinion, the circumstances warrant and the interests of the Indian landowners are fully protected: *Provided further,* That a lessee may file a bond (Form 5–154f), in the sum of $15,000 for all leases of minerals up to 10,240 acres under the jurisdiction of the officer in charge of the Five Civilized Tribe Agency.

(b) In lieu of the bonds required under paragraph (a) of this section, a lessee may furnish a bond (Form 5–156) in the sum of $75,000 for full nationwide coverage with an acceptable company

authorized to act as sole surety to cover all oil and gas leases and oil and gas prospecting permits without geographic or acreage limitation to which the lessee or permittee is or may become a party.

(c) The right is specifically reserved to increase the amount of bonds and the collateral security prescribed in paragraph (a) of this section in any particular case when the officer in charge deems it proper to do so. The nationwide bond may be increased at any time in the discretion of the Secretary of the Interior.

[22 FR 10599, Dec. 24, 1957, as amended at 26 FR 164, Jan. 10, 1961. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 213.16 Additional information may be requested by Area Director.

The Area Director, or other Government officer having the matter in charge or under investigation, may, at any time, either before or after approval of a lease, call for any additional information desired to carry out the purpose of the regulations in this part, and such information shall be furnished within the time specified in the request therefor. If the lessee fails to furnish the information requested, the lease will be subject to disapproval or cancellation, whichever is appropriate.

§ 213.17 Government reserves right to purchase minerals produced.

In time of war or other public emergency any of the executive departments of the U.S. Government shall have the option to purchase at the prevailing market price on the date of sale all or any part of the minerals produced under any lease.

RENTS AND ROYALTIES

§ 213.18 Manner of payment of rents and royalties.

(a) Except as provided in paragraph (b) of this section, all rents, royalties and other payments due under leases which have been or may be approved in accordance with this part shall be paid by check or bank draft to the order of the Treasurer of the United States and mailed to the Area Director for deposit to the credit of the various lessors. When lessees and purchasers are instructed, in writing, by the Area Director, which instructions shall be complete as to lessors for each lease, separate remittances for each payment due each lessor shall be mailed to the Area Director. Any payments under this paragraph, covering lands or interests therein from which restrictions have been removed by death or otherwise, may continue to be made in the manner provided by this paragraph until ten days after notice of relinquishment of supervision has been mailed to the lessee.

(b) The Area Director may, in his discretion, whenever it appears to be in the best interest of any lessor, authorize and direct the lessee to pay directly to the lessor, or to the legal guardian of any lessor under guardianship, the rents, royalties and other payments (other than bonuses and advance payments for the first year) due under leases which have been or may be approved in accordance with the regulations in this part. Any such authority for direct payment shall be in writing, addressed to the owner or owners of the lease, and shall expressly provide for its revocation or modification at any time, in writing, by the Area Director. Written authorization for direct payment and written revocations or modifications thereof shall become a part of the lease and shall be distributed as in the case of original leases. All such revocations or modifications shall have a 5-day grace period after date of receipt. Rents, royalties, and other payments paid in accordance therewith shall constitute full compliance with the requirements of the lease pertaining to such payments.

(c) Rents and royalties paid pursuant to paragraphs (a) and (b) of this section on producing leases shall be supported by statements, acceptable to the Secretary or his duly authorized representative, to be transmitted to the Supervisor, in duplicate, covering each lease, identified by contract number and lease number. Such statements shall show the specific items of rents or royalties for which remittances are made, and shall identify each remittance by the remittance number, date, amount, and name of each payee.

(d) Rents paid on nonproducing leases pursuant to paragraphs (a) and (b) of

this section shall be supported by a statement, acceptable to the Area Director, to be transmitted to the Area Director covering each lease, identified by contract number and lease number. Each remittance shall be identified by the remittance number, date, amount, name of each payee, and dates of mailing of remittances. Date of mailing, or, if remittance is sent by registered mail, the date of registration receipts covering remittances mailed, shall be considered as date of payment.

(e) For leases other than oil and gas, all advance rentals and royalties for the first year shall be paid to the Area Director at the time of filing the lease, and the advance royalty and 20 percent of the first year's rental so paid shall be and become the property of the lessor, if the lease be disapproved because of the lessee's failure to meet the requirements of the law or of the regulations in this part or because of any other fault or defect chargeable to the lessee.

§ 213.19 Crediting advance annual payments.

In the event of discovery of minerals, all advance rents and advance royalties shall be allowed as credit on stipulated royalties for the year for which such advance payments have been made. No refund of such advance payments made under any lease will be allowed in the event the royalty on production is not sufficient to equal such advance payment; nor will any part of the moneys so paid be refunded to the lessee because of any subsequent surrender or cancellation of the lease.

§ 213.20 [Reserved]

§ 213.21 Rate of rents on leases other than oil and gas.

On all mineral leases of allotted lands other than oil and gas leases, rental shall be paid annually in advance from the date of approval of the lease, as follows: Fifty cents per acre for the first year, 75 cents per acre for the second year, and $1 per acre for the third and each succeeding year of the term of the lease.

§ 213.22 Expenditures under lease other than oil and gas.

(a) On all leases for deposits of minerals other than oil and gas, there shall be expended for each calendar year the lease is in force, and for each fraction of a calendar year greater than 6 months, in actual mining operations, development, or improvements upon the lands leased, or for the benefit thereof, a sum which, with the annual rental, shall amount to not less than $5 per acre.

(b) The expenditures for development required by this section upon application may be waived in writing by the Area Director or other officer in charge of the Five Civilized Tribes Agency either before or after the approval of a lease, such waiver to be subject to termination at any time upon 10 days' written notice to the holder of the lease by the said Area Director or other officer in charge.

(c) Each lessee, except oil and gas lessees, shall file with the Area Director an itemized statement in duplicate, within 20 days after the close of each calendar year, of the amount and character of said expenditures during such years the statement to be certified under oath by the lessee or his agent having personal knowledge of the facts contained therein.

§ 213.23 Royalty rates for minerals other than oil and gas.

Unless otherwise authorized by the Commissioner of Indian Affairs, the minimum rates for minerals other than oil and gas shall be as follows:

(a) For substances other than gold, silver, copper, lead, zinc, tungsten, coal, asphaltum and allied substances, oil, and gas, the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent of the value, at the nearest shipping point, of all ores, metals, or minerals marketed.

(b) For gold and silver the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent to be computed on the value of bullion as shown by mint returns after deducting forwarding charges to the point of sale; and for copper, lead, zinc, and tungsten, a royalty of not less than 10 percent to be

computed on the value of ores and concentrates as shown by reduction returns after deducting freight charges to the point of sale. Duplicate returns shall be filed by the lessee with the Area Director within 10 days after the ending of the quarter or other period specified in the lease within which such returns are made: *Provided, however,* That the lessee shall pay a royalty of not less than 10 percent of the value of the ore or concentrates sold at the mine unless otherwise provided in the lease.

(c) For coal the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds of mine run, or coal as taken from the mine, including what is commonly called ''slack.''

(d) For asphaltum and allied substances the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds on crude material or not less than 60 cents per ton on refined substances.

§ 213.24 Rate of rents and royalties on oil and gas leases.

The lessee shall pay, beginning with the date of approval of oil and gas leases by the Secretary of the Interior, a rental of $1.25 per acre per annum in advance during the continuance thereof, together with a royalty of 12½ percent of the value or amount of all oil, gas and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased, save and except oil and/or gas used by the lessee for development and operation purposes on the lease, which oil or gas shall be royalty free. A higher rate of royalty may be fixed by the Secretary of the Interior or his authorized representative, prior to the advertisement of land for oil and gas leases. During the period of supervision, ''value'' for the purposes of the lease may, in the discretion of the Secretary of the Interior be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary of the Interior, be deemed mere evidence of or conclusive evidence of such value. When paid in value, such royalties shall be due and payable monthly at such time as the lease provides; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor. The lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced. The lessee shall be in no manner responsible or held liable for loss or destruction of such oil in storage by causes beyond his control.

§ 213.25 Free use of gas by lessor.

If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, then the lessor may use sufficient gas, free of charge, for all stoves and inside lights in the principal dwelling house on said premises, by making his own connections to a regulator, connected to the well and maintained by the lessee, and the lessee shall not be required to pay royalty on gas so used. The use of such gas shall be at the lessor's risk at all times.

§ 213.26 Rate of royalty on casing-head gas.

(a) On casing-head gas used or sold for the manufacture of casing-head gasoline the minimum rate of royalty shall be 12½ percent of the value of the casing-head gas, which value shall be determined and computed on the basis and in the manner provided in the applicable operating regulations of the Department.

(b) In cases where gas produced and sold has a value for drip gasoline, casing-head gasoline content, and as dry

gas from which the casing-head gasoline has been extracted, then the royalties above provided shall be paid on all such values.

§ 213.27 Rate of rental for nonutilized gas wells.

If the gas from a gas producing well is not marketed or utilized, other than for operation of the lease, then for each such well the lessee shall pay such rental as may be determined by the supervisor and approved by the Secretary of the Interior, calculated from the date of the completion of the well. Payment of annual gas rentals shall be made within 30 days from the date such payment becomes due.

§ 213.28 Royalty payments and production reports.

(a) Royalty payments on all oil and gas or other producing leases shall be made at the rates, and at such time, and in the manner prescribed by the terms of the lease.

(b) Quarterly reports shall be made by each lessee on nonproducing leases other than oil and gas within 25 days after December 31, March 31, June 30, and September 30, of each year, upon forms provided, showing manner of operations and total production during such quarter. A lessee may include within one sworn statement all leases upon which there is no production or upon which dry holes have been drilled. Reports of oil and gas leases where royalty accounting is done in the field office of the supervisor will be made as required in the operating regulations.

§ 213.29 Division orders.

(a) Lessees may make arrangements with the purchasers of oil and gas for the payment of the royalties as provided for in the lease and the regulations but such arrangement, if made, shall not operate to relieve a lessee from responsibility should the purchaser fail or refuse to pay royalties when due. Where lessees avail themselves of this privilege, division orders should be executed by the lessee and forwarded to the supervisor for approval. Purchasers may be authorized by the supervisor to reimburse lessees out of royalties for advance rents and advance royalties. Copies of written instructions, notices, modifications, revocations, and authorizations, as provided for in § 213.18 (a) and (b), shall be furnished to purchasers. The right is reserved for the supervisor to cancel a division order at any time or require the purchaser to discontinue to run the oil of any lessee who fails to operate the lease properly or otherwise violates the provisions of the lease, of the regulations in this part, or of the operating regulations.

(b) When oil is taken by authority of a division order, the lessee or his representatives shall be actually present when the oil is gauged and records are made of the temperature, gravity, and impurities. The lessee will be held responsible for the correctness and the correct recording and reporting of all the foregoing measurements, which, except lowest gauge, shall be made at the time the oil is turned into the pipeline. Failure of the lessee to perform properly these duties will subject the division order to revocation.

OPERATIONS

§ 213.30 Permission to start operations.

No operations will be permitted on any lease before it is approved. Written permission must be secured from the supervisor before any operations are started under any oil and gas lease. Operations must be in accordance with the operating regulations promulgated by the Secretary of the Interior. Copies of these regulations may be secured from either the supervisor or the Area Director and no operations should be attempted without a study of the operating regulations.

§ 213.31 Restrictions on operations.

(a) Oil and gas leases issued under the provisions of this part shall be subject to imposition by the Secretary of the Interior of such restrictions as to time or times for the drilling of wells and as to the production from any well or wells as in his judgment may be necessary or proper for the protection of the natural resources of the leased land and in the interest of the lessor. In the exercise of his judgment the Secretary of the Interior may take into consideration, among other things, the Federal

laws, State laws, regulations by competent Federal or State authorities, lawful agreements among operators regulating either drilling or production, or both.

(b) All such leases shall be subject to any cooperative or unit plan of development affecting the leased lands that may be required by the Secretary of the Interior, but no lease shall be included in any cooperative or unit plan without prior approval of the Secretary of the Interior. If said plan effects a change in the lease terms, the consent of the lessor or lessors must be obtained before the plan is effective.

§ 213.32 Wells.

The lessee shall agree (a) to drill and produce all wells necessary to offset or protect the leased land from drainage by wells on adjoining lands not the property of the lessor, or in lieu thereof, compensate the lessor in full each month for the estimated loss of royalty through drainage: *Provided,* That during the period of supervision by the Secretary of the Interior, the necessity for offset wells shall be determined by the supervisor and payment in lieu of drilling and producing shall be with the consent of, and in an amount determined by the Secretary of the Interior; (b) at the election of the lessee to drill and produce other wells: *Provided,* That the right to drill and produce such other wells shall be subject to any system of well spacing or production allotments authorized and approved under applicable law or regulations, approved by the Secretary of the Interior and affecting the field or area in which the leased lands are situated; and (c) if the lessee elects not to drill and produce such other wells for any period the Secretary of the Interior may, within 10 days after due notice in writing, either require the drilling and production of such wells to the number necessary, in his opinion, to insure reasonable diligence in the development and operation of the property, or may in lieu of such additional diligent drilling and production require the payment on and after the first anniversary date of the lease of not to exceed $1 per acre per annum, which sum shalI be in addition to any rental or royalty herein specified.

§ 213.33 Diligence and prevention of waste.

The lessee shall exercise diligence in drilling and operating wells for oil and gas on the leased lands while such products can be secured in paying quantities; carry on all operations in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; plug securely all wells before abandoning the same and to shut off effectually all water from the oil or gas-bearing strata; not drill any well within 200 feet of any house or barn on the premises without the lessor's written consent approved by the Area Director; carry out at his expense all reasonable orders and requirements of the supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; bury all pipelines crossing tillable lands below plow depth unless other arrangements therefor are made with the Area Director; pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: *Provided,* That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond his control.

§ 213.34 Inspection of premises; books and accounts.

Lessees shall agree to allow the lessors and their agents or any authorized representative of the Interior Department to enter, from time to time, upon and into all parts of the leased premises for the purpose of inspection, and shall further agree to keep a full and correct account of all operations and make reports thereof, as required by the applicable regulations of the Department; and their books and records, showing manner of operations and persons interested, shall be open at all times for examination by such officers

of the Department as shall be instructed in writing by the Secretary of the Interior or authorized by regulations to make such examination.

§ 213.35 Mines to be timbered properly.

In mining operations the lessee shall keep the mine well and sufficiently timbered at all points where necessary, in accordance with good mining practice, and in such manner as may be necessary to the proper preservation of the property leased and safety of workmen.

§ 213.36 Surrender of leased premises in good condition.

On expiration of the term of a lease, or when a lease is surrendered, the lessee shall deliver to the Government the leased ground, with the mine workings in case of leases other than oil and gas, in good order and condition, and the bondsmen will be held for such delivery in good order and condition, unless relieved by the Secretary of the Interior for cause. It shall, however, be stipulated that the machinery necessary to operate any mine is the property of the lessee, but that it may be removed by him only after the condition of the property has been ascertained by inspection by the Secretary of the Interior or his authorized agents, to be in satisfactory condition.

§ 213.37 Penalties.

Failure of the lessee to comply with any provisions of the lease, of the operating regulations, of the regulations in this part, orders of the Area Director or his representative, or of the orders of the supervisor or his representative, shall subject the lease to cancellation by the Secretary of the Interior or the lessee to a penalty of not more than $500 per day for each day the terms of the lease, the regulations, or such orders are violated, or to both such penalty and cancellation: *Provided*, That the lessee shall be entitled to notice and hearing, within 30 days after such notice, with respect to the terms of the lease, regulations, or orders violated, which hearing shall be held by the supervisor, whose findings shall be conclusive unless an appeal be taken to the Secretary of the Interior within 30 days after notice of the supervisor's decision, and the decision of the Secretary of the Interior upon appeal shall be conclusive.

§ 213.38 Assignments and overriding royalties.

(a) Leases or any interest therein, may be assigned or transferred only with the approval of the Secretary of the Interior, and to procure such approval the assignee must be qualified to hold such lease under existing rules and regulations, and shall furnish a satisfactory bond for the faithful performance of the covenants and conditions thereof. No lease or any interest therein, or the use of such lease, shall be assigned, sublet, or transferred, directly or indirectly, by working or drilling contract, or otherwise, without the consent of the Secretary of the Interior. Assignments of leases shall be filed with the Area Director within 20 days after the date of execution.

(b) An agreement creating overriding royalties or payments out of production on oil and gas leases under this part shall be subject to the provisions of § 211.26(d) of this subchapter, or as hereafter amended.

[22 FR 10599, Dec. 24, 1957, as amended at 23 FR 9758, Dec. 18, 1958. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 213.39 Stipulations.

The lessee under any lease heretofore approved may by stipulation (Form 5–154i) with the consent of the lessor and the approval of the Secretary of the Interior, make such approved lease subject to all the terms, conditions, and provisions contained in the lease form and regulations currently in use. Stipulations shall be filed with the Area Director within 20 days after the date of execution.

§ 213.40 Cancellations.

(a) When, in the opinion of the Secretary of the Interior, the lessee has violated any of the terms and conditions of a lease or of the applicable regulations, or if mining operations are conducted wastefully and without regard to good mining practice, the Secretary of the Interior shall have the right at any time after 30 days' notice to the lessee specifying the terms and

conditions violated, and after a hearing, if the lessee shall so request within 30 days after issuance of the notice, to declare such lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

(b) On the following conditions, the lessee may, on approval of the Secretary of the Interior, surrender a lease or any part of it:

(1) That he make application for cancellation to the Area Director having jurisdiction over the land.

(2) That he pay a surrender fee of $1 at the time the application is made.

(3) That he pay all royalties and rentals due to the date of such application.

(4) That he make a satisfactory showing that full provision has been made for conservation and protection of the property and that all wells, drilled on the portion of the lease surrendered, have been properly abandoned.

(5) If the lease has been recorded, that he file, with his application, a recorded release of the acreage covered by the application.

(6) If the application is for the cancellation of the entire lease or the entire undivided portion, that he surrender the lease: *Provided,* That where the application is made by an assignee to whom no copy of the lease was delivered, he will be required to surrender only his copy of assignment.

(7) If the lease (or portion being surrendered or canceled) is owned in undivided interests by more than one party, then all parties shall join in the application for cancellation.

(8) That all required fees and papers must be in the mail or received on or before the date upon which rents and royalties become due, in order for the lessee and his surety to be relieved from liability for the payment of such royalties and rentals.

(9) If there has been a contest respecting a lease or leases, the approved, the disapproved, or the canceled parts thereof will be held in the office of the Area Director for 5 days after the Department's decision has been promulgated, by mail or delivery, and will not be delivered, if within that period a motion for review and reconsideration be filed, until such motion is passed upon by the Department.

(10) In the event oil or gas is being drained from the leased premises by wells not covered by a lease; the lease, or any part of it, may be surrendered, only on such terms and conditions as the Secretary of the Interior may determine to be reasonable and equitable.

(c) No part of any advance rental shall be refunded to the lessee nor shall he be relieved, by reason of any subsequent surrender or cancellation of the lease, from the obligation to pay said advance rental when it becomes due.

(d) For proper method of terminating departmental leases covering lands from which restrictions have been removed see section 3 of the act of May 27, 1908 (35 Stat. 312).

REMOVAL OF RESTRICTIONS

§ 213.41 Leases executed but not approved before restrictions removed from land.

Leases executed before the removal of restrictions against alienation on land from all of which restrictions against alienation shall be removed after such execution, if such leases contain specific provisions for approval by the Secretary of the Interior, whether now filed with the Department or presented for consideration hereafter, will be considered and acted upon by this Department as heretofore but only for the purpose of approving or disapproving the instrument.

§ 213.42 Operations after removal of restrictions from leased lands.

(a) Oil and gas leases heretofore approved and leases for other minerals now or hereafter in force on land from all of which restrictions against alienation have been or shall be removed, even if such leases contain provision authorizing supervision by this Department, shall after such removal of restrictions against alienation, be operated entirely free from such supervision, and the authority and power delegated to the Secretary of the Interior in said leases shall cease and all payments required to be made to the Area Director shall thereafter be made to the lessor or the then owner of the land, and changes in regulations thereafter made by the Secretary of the Interior shall not apply to such leased

land from which said restrictions are removed.

(b) In the event restrictions are removed from a part of the land included in any lease to which this section applies the entire lease shall continue subject to the supervision of the Secretary of the Interior, and all royalties thereunder shall be paid to the Area Director until such time as the lessor and lessee shall furnish the Secretary of the Interior satisfactory information that adequate arrangements have been made to account for the oil, gas or mineral upon the restricted land separately from that upon the unrestricted. Thereafter the restricted land only shall be subject to the supervision of the Secretary of the Interior: *Provided,* That the unrestricted portion shall be relieved from such supervision as in the lease or regulations provided.

§ 213.43 Relinquishment of Government supervision.

All oil and gas leases hereafter executed shall contain the following relinquishment of supervision clause and terms operative after such relinquishment, or other provisions similar in substance:

Relinquishment of supervision by the Secretary of the Interior.—Should the Secretary of the Interior, at any time during the life of this instrument, relinquish supervision as to all or part of the acreage covered hereby, such relinquishment shall not bind lessee until said Secretary shall have given 30 days' written notice. Until said requirements are fulfilled, lessee shall continue to make all payments due hereunder as heretofore in section 3(c). After notice of relinquishment has been received by lessee, as herein provided this lease shall be subject to the following further conditions:

(a) All rentals and royalties thereafter accruing shall be paid in the following manner: Rentals and royalties shall be paid to lessor or his successors in title, or to a trustee appointed under the provision of section 9 hereof. Rentals and royalties shall be paid directly to lessor, his successors in title, or to said trustee as the case may be.

(b) If, at the time supervision is relinquished by the Secretary of the Interior, lessee shall have made all payments then due hereunder, and shall have fully performed all obligations on its part to be performed up to the time of such relinquishment, then the bond given to secure the performance hereof, on file in the Indian Office, shall be of no further force or effect.

(c) Should such relinquishment affect only part of the acreage, then lessee may continue to drill and operate the land covered hereby as an entirety: *Provided,* That lessee shall pay in the manner prescribed by section 3(c), for the benefit of lessor such proportion of all rentals and royalties due hereunder as the acreage retained under the supervision of the Secretary of the Interior bears to the entire acreage of the lease, the remainder of such rentals and royalties to be paid directly to lessor or his successors in title or said trustee as the case may be, as provided in subdivision (a) of this section.

Division of fee. It is covenanted and agreed that should the fee of said land be divided into separate parcels, held by different owners, or should the rental or royalty interests hereunder be so divided in ownership, after the execution of this lease and after the Secretary of the Interior relinquishes supervision hereof, the obligations of lessee hereunder shall not be added to or changed in any manner whatsoever save as specifically provided by the terms of this lease. Notwithstanding such separate ownership, lessee may continue to drill and operate said premises as an entirety: *Provided,* That each separate owner shall receive such proportion of all rentals and royalties accruing after the vesting of his title as the acreage of the fee, or rental or royalty interest, bears to the entire acreage covered by the lease; or to the entire rental and royalty interest as the case may be: *Provided further,* That, if, at any time after departmental supervision hereof is relinquished, in whole or in part, there shall be four or more parties entitled to rentals or royalties hereunder, whether said parties are so entitled by virtue of undivided interests or by virtue of ownership of separate parcels of the land covered hereby, lessee at his election may withhold the payment of further rentals or royalties (except as to the portion due the Indian lessor while under restriction), until all of said parties shall agree upon and designate in writing and in a recordable instrument a trustee to receive all payments due hereunder on behalf of said parties and their respective successors in title. Payments to said trustee shall constitute lawful payments hereunder, and the sole risk of an improper or unlawful distribution of said funds by said trustee shall rest upon the parties naming said trustee and their respective successors in title. (The above provisions are copied from oil and gas mining lease Form 5–154h,[1] revised April 24, 1935.)

[1] For information relative to obtaining Form 5–154h, see § 211.30.

§ 213.44 Division of royalty to separate fee owners.

Should the removal of restrictions affect only part of the acreage covered by a lease containing provisions to the effect that the royalties accruing under the lease, where the fee is divided into separate parcels, shall be paid to each owner in the proportion which his acreage bears to the entire acreage covered by the lease, the lessee or assignee of such unrestricted portion will be required to make the reports required by the regulations in this part and the operating regulations with respect to the beginning of drilling operations, completion of wells, and production the same as if the restrictions had not been removed. In the event the unrestricted portion of the leased premises is producing, the owner of the lease thereon will be required to pay the portion of the royalties due the Indian lessor at the time and in the manner specified by the regulations in this part.

§ 213.45 Restrictions especially continued as to certain lands.

Restricted lands allotted as either homestead or surplus allotments, designated as tax exempt under section 4 of the act of May 10, 1928, as amended May 24, 1928 (45 Stat. 495, 733), the entire interest in which was acquired by inheritance, gift, devise, or purchase with restricted funds, by persons of one-half or more Indian blood, after the passage of the act of January 27, 1933 (47 Stat. 777), continue to be restricted under the provisions of the last mentioned act and oil and gas leases thereof are subject to the regulations in this part and all such leases to be valid must be approved by the Secretary of the Interior. Lands inherited by or devised to full blood Indians prior to the act of January 27, 1933, are not affected as to restrictions by the provisions of said act and may continue to be leased with the approval of the county court having jurisdiction of the estate of the deceased allottee and without approval of the Secretary of the Interior (54 L.D. 382; 10 F. (2d), 487). Lands acquired prior to the passage of the act of January 27, 1933 by Indians of less than full blood, whether such lands were restricted and tax exempt or restricted and taxable, passed to such persons free of all restrictions. Inherited homesteads restricted prior to April 26, 1931, by section 9,[2] of the act of May 27, 1908 (35 Stat. 312), for the benefit of heirs of one-half or more Indian blood but less than full bloods, born after March 4, 1906, became unrestricted April 26, 1931, or upon the death prior thereto of the heir born subsequent to March 4, 1906, and oil and gas leases thereof are not subject to the regulations in this part nor under the jurisdiction of the Secretary of the Interior.

§ 213.46 Field clerks.

Local representatives known officially as ''field clerks'' are located in the various districts comprising that part of the State of Oklahoma occupied by the Five Civilized Tribes. Such field clerks shall report to and act under the direction of the Area Director. Any and all counsel and advice desired by allottees concerning deeds, leases, or other instruments or matters relating to lands allotted to them shall be furnished by such field clerks free of charge. Field clerks shall not, during their term of employment, have any personal interest, directly or indirectly, in any transaction concerning leases covering lands of allottees or in the purchase or sale of any such lands regardless of whether the restrictions have or have not been removed. This prohibition, however, shall not apply to lands which such field clerks have legally acquired before their employment in the Bureau of Indian Affairs. Field clerks shall report to the Area Director at the end of each month the work performed during such period and special reports shall be made immediately of any apparently illegal transaction involving the estates or allotments of allottees.

§ 213.47 Forms.

The provisions of § 211.30 of this chapter, or as hereafter amended, are applicable to this part.

[24 FR 7949, Oct. 2, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

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[2] Repealed restrictions on inherited homesteads, by sec. 2 of the act of May 10, 1928 (45 Stat. 495).

§213.48 Effective date.

The regulations in this part shall become effective and in full force from and after the date of approval (Apr. 27, 1938), and shall be subject to change or alteration at any time by the Secretary of the Interior: *Provided,* That no regulations made after the approval of any lease shall operate to affect the term of the lease, rate of royalty, rental, or acreage unless agreed to by both parties to the lease. All former regulations governing the leasing of individually owned lands of the Five Civilized Tribes for mining purposes are superseded by the regulations in this part.

§213.49 Scope of regulations.

The regulations in this part shall apply in so far as practicable to land purchased for Indians under the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 501-509), as well as to other lands of individual Indians of the Five Civilized Tribes.

PART 214—LEASING OF OSAGE RESERVATION LANDS, OKLAHOMA, FOR MINING, EXCEPT OIL AND GAS

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AUTHORITY: Sec. 3, 34 Stat. 543.

SOURCE: 22 FR 10605, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§214.1 Definition.

The term ''officer in charge'' shall refer to the superintendent of the Osage Indian Agency and school or other representative of the Government who may, for the time, be in charge of the Osage Agency and school, or any person who may be detailed by the Secretary of the Interior or the Commissioner of Indian Affairs to take charge of leasing or mining operations under the regulations in this part.

§214.2 Sale of leases.

Leases of minerals other than oil and gas may be negotiated with the tribal council after permission to do so has been obtained from the officer in charge. Leases with all papers required, shall be filed with the officer in charge within 30 days from the date of execution by the lessee and the principal chief of the Osage Tribe. The lease will be forwarded to the Commissioner of Indian Affairs for consideration by him and the Secretary of the Interior and will become effective only after approval by the Secretary of the Interior. If any lease should be disapproved through no fault of the lessee, all amounts deposited by him will be promptly refunded.

§214.3 Corporate information.

A corporation shall file with its first lease a certified copy of articles of incorporation, and, if a foreign corporation, evidence showing compliance with local corporation laws in duplicate; a list of all stockholders, with their post office addresses, and showing the number of shares of capital stock held by each; together with a sworn statement of its proper officer showing:

(a) The total number of shares of the capital stock actually issued, the number of shares actually sold and the amount of cash paid into the treasury

out of the stock sold, or, if paid in property, kind, quantity, and value of the same.

(b) Of the stock sold, how much per share remains unpaid and subject to assessment.

(c) How much cash the company has in its treasury and elsewhere, and from what source it was received.

(d) What property, exclusive of cash, is owned by the company, and its value.

(e) What the total indebtedness of the company is, and the nature of its obligations.

(f) Names of officers and directors.

§ 214.4 Bonds.

Lessee shall furnish with each lease at the time it is filed with the officer in charge an acceptable bond not less than the following amounts:

For less than 80 acres	$1,000
For 80 acres and less than 120 acres	1,500
For 120 acres and not more than 160 acres	2,000
For each additional 40 acres, or part thereof above 160 acres	500

Provided, That for leases for minerals other than oil and gas the Secretary of the Interior or his authorized representatives with the consent of the Indian landowner may authorize a bond for a lesser amount if, in his opinion, the circumstances warrant and the interests of the Indian landowners are fully protected: *Provided further,* That the lessee shall be allowed to file bond, Form S[1] covering all leases to which he or they are or may become parties instead of a separate bond in each case, such bond to be in the penal sum of $15,000. The right is reserved to change the amount of the bond in any particular case, or to require a new bond in the discretion of the Secretary of the Interior.

[26 FR 164, Jan. 10, 1961. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 214.5 Additional information.

The officer in charge may, at any time, either before or after approval of a lease call for any additional information necessary to carry out the purpose and intent of the regulations in this part, and such information shall be furnished within the time specified in the request therefor.

§ 214.6 Failure of lessee to complete lease.

Should a lessee fail to furnish, within the time specified after his bid is accepted, the papers necessary to put his lease and bond in proper form for consideration, the officer in charge shall recommend that the sale be disapproved and money paid forfeited to the Osage Tribe.

§ 214.7 Operation not permitted until lease approved; 160 acres maximum for single lease.

No mining or work of any nature will be permitted upon any tract of land until a lease covering such tract shall have been approved by the Secretary of the Interior and delivered to the lessee. All leases shall be made for such period as the title to the minerals remain in the Osage Tribe, which time will expire April 8, 1931, unless otherwise provided by Congress and shall be subject to cancellation or termination as specified in this part. Leases made by corporations shall be accompanied by an affidavit by the secretary or president of the company showing the authority of its officers to execute leases, bonds, and other papers. No lease shall be made covering more than 160 acres.

§ 214.8 Acreage limitation.

No person, firm, or corporation shall hold under lease at any one time without special permission from the Secretary of the Interior in excess of the following areas:

(a) For deposits of the nature of lodes, or veins containing ores of gold, silver, copper, or other useful metals, 640 acres.

(b) For beds of placer gold, gypsum, asphaltum, phosphate, iron ores, and other useful minerals, other than coal, lead, and zinc, 960 acres.

(c) For coal, 4,800 acres.

(d) For lead and zinc, 1,280 acres.

§ 214.9 Advance rental.

(a) Lessees shall pay, in addition to other considerations, annual advance rentals as follows: 15 cents per acre for

[1] For further information concerning forms, see § 214.24.

the first year; 30 cents per acre for the second year; 50 cents per acre for the third year; and $1 per acre per annum for the fourth and each succeeding year during the life of any lease: *Provided*, That all such payments of advance rentals shall be credits on royalties on production during the year for which payment of advance rental is made.

(b) The payment of annual advance rental shall not release the lessee from the obligation to conduct mining operations, as required by the terms of the lease.

§ 214.10 Royalty rates.

Royalties will be required as follows, subject to the approval of the President, in accordance with the act of June 28, 1906 (34 Stat. 543):

(a) For gold, silver, or copper lessee shall pay quarterly a royalty of 10 percent to be computed on the gross value of the ores as shown by reduction returns after deducting freight and treatment charges. Duplicate reduction returns shall be filed by the lessee with the officer in charge within 20 days after the reduction of the ores.

(b) For coal the lessee shall pay a royalty of 10 cents per ton of 2,000 pounds on mine run or coal as taken from the mines, including what is commonly called ''slack.''

(c) For asphaltum and allied substances, the lessee shall pay quarterly a royalty of 10 cents per ton of 2,000 pounds on crude material, and 60 cents per ton on refined substances.

(d) For substances other than gold, silver, copper, lead, zinc, coal, and asphaltum the lessee shall pay quarterly a royalty of 10 percent of the value at the nearest shipping point of all ores, metals, or minerals marketed.

(e) The royalties to be paid for lead and zinc shall be computed for each mineral at the same rate that the amount of the concentrates of such mineral bears to the total amount of dirt or rock actually mined, except as stipulated in this section. The royalty so determined shall be increased by adding 1 percent for each increase of $10 in the selling price per ton thereof over and above the following, which shall be the agreed base or standard:

For zinc—$50
For lead—$65

but in no case shall the rate of royalty be less than 5 percent or more than 20 percent. The percentage of recovery shall be computed as nearly as practicable upon the ore included in each sale, but where it is impracticable so to do the officer in charge and the lessee shall agree upon some other method of computation which will produce substantially the same result: *Provided*, That in case of their disagreement the Commissioner of Indian Affairs shall prescribe a rule of computation to be followed in such cases.

NOTE: The royalty would always be determined under this rule by ascertaining the percentage of recovery were it not for two things: (1) the flat rates which are fixed as the minimum and the maximum rates of royalty and (2) variations in the selling price of the ores. Concrete examples coming under the rule are set forth in the following table:

ZINC

[Where the base or standard is $50 per ton]

Percentage of recovery	Selling price	Royalty (percent)
7	$48	7
14	49	14
12	50	12
15	60	16
30	60	20
9	70	11

A similar table might be constructed for royalties on lead, but in so doing it would be necessary to bear in mind that the base or standard selling price for the lead is to be $65 instead of $50.

§ 214.11 Payment of rents and royalties.

All rentals, royalties, damages, or other amounts which may become due under leases approved in accordance with the regulations in this part shall be paid to the disbursing agent at Pawhuska, Okla. The remittances shall be in St. Louis exchange, except that where such exchanges cannot be procured post office or express money orders will be accepted. All royalties or other payments or claims of the Osage Tribe arising under such leases shall be a lien upon the mining plant machinery, and all minerals mined on the property leased or in which the lessee still retains any right, claim, or interest.

§ 214.12 Time of payment of royalties.

Royalties on all minerals produced in any quarter (January-March, April-June, July-September, October-December) shall be paid on or before the 25th day of the month next succeeding, and the remittance shall be accompanied by sworn reports covering all operations, whether there has been production or not. Annual advance rentals shall be paid within 10 days after the beginning of the lease year.

§ 214.13 Diligence; annual expenditures; mining records.

(a) Lessees shall exercise diligence in the conduct of prospecting and mining operations, and on all leases referred to in § 214.8(a) shall expend annually in development work a sum which with the annual rental shall make an amount of not less than $5 per acre. On all leases referred to in § 214.8 (b) and (c) there shall be expended annually in development work a sum which inclusive of the annual rental shall make an amount of not less than $1 for each acre or fraction thereof included in the lease. The lands covered by each lease referred to in § 214.8 (d) shall be prospected for lead and zinc ores by drilling within 1 year test holes aggregating 2,000 feet unless a sufficient ore body is discovered to justify the sinking of a shaft to the ore body and the erecting of a mill when such tract may be released from further prospecting by the written consent of the superintendent: *Provided*, That within 90 days after an ore body of sufficient quantity is discovered, and shown by the logs or records of the drill holes, to justify the expenditure, the sinking of a shaft to the ore body, and the erection of a mill shall be commenced and continued to completion without cessation of work thereon, barring unavoidable accidents or causes beyond the control of the lessee.

(b) Lessee shall keep upon the leased premises accurate records of the drilling, redrilling, or deepening of all holes showing the formations, and upon the completion of such holes, copies of such records shall be transmitted to the superintendent by the lessee after the first completion and of any further drilling thereafter, and a failure to so furnish report within the time prescribed shall be considered a violation of the regulations. Lessee shall, before commencing operations, file with the superintendent a plat and preliminary statement of how the openings are to be made and the property developed.

§ 214.14 Use of surface lands.

(a) Lessees may use so much of the surface of the leased land as shall be reasonably necessary for the prospecting and mining operations and buildings required by the lease, and shall also have the right-of-way over and across such land to any point of prospecting or mining operations, but such use of the surface shall be permissible only under condition of least injury and inconvenience to the allottee or owner of the land. Lessees before commencing and during such operations shall pay all reasonable damages for the use of the surface land and to any growing crops thereon, or to improvements on said land, or any damage that during the life of the lease may be occasioned in any manner whatsoever by the use of the surface, to the allottee or his successor in interest or assignee, or to a lessee of the surface of said land or to an oil and gas lessee, damages to be apportioned among the parties interested in the surface, whether as owner, lessee, or otherwise, as the parties in interest may mutually agree or as their interests may appear. If the parties are unable to agree concerning damages the same shall be determined by arbitration.

(b) All agreements (or authenticated copies thereof) providing for the settlement of damages shall be filed in the Osage Agency if the surface owner is a restricted Indian, and all such amounts which may be due and payable to any such Indian shall be paid to the superintendent and by him immediately remitted to the Indian entitled thereto. All sums due as royalty or damages shall be a lien on all equipment on leased premises.

§ 214.15 Homesteads.

Lessees and those acting under them shall not conduct prospecting or mining operations within or upon any homestead selection without written

consent of the Secretary of the Interior.

§ 214.16 Settlement of damages.

Any person, other than a lessee or an allottee or the heirs of a deceased allottee, claiming an interest in any leased tract or in damages thereto must furnish to the officer in charge a statment in writing showing his interest, and failure to furnish such statement shall constitute a waiver of notice and estop said person from claiming any part of such damages after the same shall have been disbursed.

§ 214.17 Use of timber from restricted lands.

Lessees will not be permitted to use any timber from any Osage lands not relieved of restrictions upon alienation except under written agreement with the owner approved by the officer in charge.

§ 214.18 Assignments.

Approved leases or any interest therein may be transferred or assigned with the consent and approval of the Secretary of the Interior and not otherwise. Transfers or assignments, when so approved, shall be subject to the terms and conditions of the original leases and regulations under which such leases were approved as well as to such additional requirements as the Secretary of the Interior may prescribe. The transferee or assignee shall furnish with his transfer or assignment a satisfactory bond as prescribed in § 214.4 in connection with leases. Any attempt to transfer or assign an approved lease or any interest therein without the consent and approval of the Secretary of the Interior shall be absolutely void and shall subject the original lease to cancellation in the discretion of the secretary.

§ 214.19 Cancellation.

When a lessee makes application for the cancellation of a lease in whole or in part, all royalties or rentals due up to and including the date of the application for cancellation must be paid, and that part of the lease delivered to the lessee shall be surrendered before such application will be considered. In the event a lease is surrendered for cancellation in whole or in part, after a new lease year has been entered upon, the lessee and his surety shall be liable for the advance rentals required to be paid under the lease for that year, and no part of such rentals which may have been paid shall be refunded.

§ 214.20 Annual reports by corporate lessees.

Lessees and assignees must submit to the officer in charge on January 1, of each year and at such other times as may be required by the Secretary of the Interior, a statement containing the information called for in § 214.3(a) and (f) and also showing any changes in officers or changes in or additions to stockholders. At any time individual stockholders may be required to show to the satisfaction of the Secretary of the Interior in what companies or with what persons or firms they are interested in mining leases on the Osage Reservation and whether they hold such stock or interest for themselves or in trust.

§ 214.21 Inspection of lessees' books and records.

Lessees shall allow the agents and representatives of the lessor, or any authorized representative of the Interior Department, to enter, from time to time, upon and into all parts of the leased premises for the purpose of inspection, and their books and records showing manner of operations and persons interested, shall be open at all times for the examination of such officers of the department as shall be instructed by the Secretary of the Interior to make such examinations.

§ 214.22 Serving of notices.

Wherever notice is provided for in this part it shall be sufficient if notice has been mailed to the last known place of address of the party, and time shall begin to run with the day next ensuing after the mailing or from the date of delivery of personal notice; but where the party is outside the State of Oklahoma the officer in charge may, in his discretion, increase the time allowed.

§ 214.23 Plat of mine location.

Lessees are required, when so requested, to file a plat of their leases showing exact locations of all mines, proposed locations, power houses, etc.

§ 214.24 Forms.

Applications, leases, and other papers must be upon forms prepared by the department, and the superintendent of the Osage Indian school, Pawhuska, Okla., will furnish prospective lessees with such forms at a cost of $1 per set.

Form M. Application for mining lease, including financial showing.
Form N. Lease (except lead and zinc).
Form O. Bond.
Form P. Authority of officers to execute papers.
Form Q. Assignment.
Form R. Lease for lead and zinc.
Form S. Collective bond.

§ 214.25 Forfeiture of lease.

On the failure of any lessee or assignee to comply with any regulation or any obligation in the lease or assignment, the Secretary of the Interior may cancel and annul such lease without resorting to the courts and without any further proceeding: *Provided*, That the party or parties charged with such violation shall be first given not less than 30 days' notice to show cause why such lease should not be canceled and annulled or other order made with reference thereto.

§ 214.26 Fine; notice and hearing.

Violation of any of the terms or conditions of any lease or of the regulations pertaining thereto shall subject the lease to cancellation by the Secretary of the Interior, or the lessee to a fine of not exceeding $500 per day for each and every day the terms of the lease or of the regulations are violated, or the orders of the superintendent in reference thereto are not complied with, or to both such fine and cancellation in the discretion of the Secretary of the Interior: *Provided*, That the lessee shall be entitled to notice and hearing with respect to the terms of the lease or of the regulations violated, which hearing shall be held by the superintendent, whose findings shall be conclusive unless an appeal be taken to the Secretary of the Interior within 30 days after notice of the superintendent's decision, and the decision of the Secretary of the Interior upon appeal shall be conclusive.

§ 214.27 Changes in regulations.

The regulations in this part are subject to change or alteration at any time by the Secretary of the Interior.

§ 214.28 Location of sites for mines and buildings.

In event of disagreement between two or more mineral lessees regarding sites for the location of wells, mines, buildings, plants, etc., the same shall be determined by the superintendent after investigation and after due consideration of prior right of any lessee by reason of date of approval of lease.

§ 214.29 Prospecting; abandonment of mines.

All prospecting or mining operations or the abandonment of a well or mine shall be subject to the approval of the superintendent, and any disagreement between lessees of mineral leases regarding operations likely to result in injury to either lessee shall be determined by the superintendent, whose decision shall be final, unless an appeal is filed with the Secretary of the Interior within 30 days after notice of such decision.

§ 214.30 Lessees must appoint local representative.

Before actual drilling or development operations are commenced on leased lands, the lessee or assignee shall appoint a local or resident representative within the State, on whom the superintendent or other authorized representative of the department may serve notice or otherwise communicate with in securing compliance with the regulations in this part and shall notify the superintendent of the name and post office address of the representative so appointed.

PART 215—LEAD AND ZINC MINING OPERATIONS AND LEASES, QUAPAW AGENCY

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AUTHORITY: Sec. 26, 41 Stat. 1248; 50 Stat. 68.

SOURCE: 22 FR 10608, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 215.0 Definitions.

The following expressions, wherever used in the regulations in this part or leases thereunder, shall have the meaning designated in this section:

(a) *Superintendent.* The term ''superintendent'' shall mean any person in charge of the Quapaw Indian Agency, or having supervision under the direction of the Secretary of the Interior of the Indian restricted and trust allotted lands thereunder.

(b) *Allottee.* The term ''allottee'' shall mean any Indian to whom land has been allotted, or any Indian owner of land or interest therein as an heir or devisee.

(c) *Incompetent Indian.* The term ''incompetent Indian'' or ''incompetent'' shall mean any Indian who has been declared by the Secretary of the Interior to be incompetent to improve or manage his restricted or trust lands properly or with benefit to himself. The term shall also include any Indian who is a minor and any Indian who is a legal incompetent under the laws of the State. The term shall also apply to any Indian who is in fact incompetent, and the question of whether an Indian is competent or incompetent at the time of making a lease of his restricted or trust Indian lands is one for the Secretary of the Interior to determine.

(d) *Lessee.* The term ''lessee,'' except where otherwise modified or limited in the regulations in this part, shall mean any person, firm, or corporation, their legal representatives, heirs, or assigns, to whom a lead and zinc mining lease has been made by or on behalf of Indians under the provisions of the regulations in this part.

(e) *Lessor.* The term ''lessor,'' except where otherwise modified or limited in the regulations in this part, shall mean any Indian owning or having any interest in restricted or trust allotted any inherited lands under the supervision of the Quapaw Indian Agency, by or for whom a lease has been executed pursuant to the regulations in this part.

(f) *Leased lands.* The terms ''leased lands,'' ''leased premises,'' or ''leased tract'' shall mean any leased restricted or trust lands within and under jurisdiction of the Quapaw Indian Agency allotted to or inherited by an Indian.

(g) *Mining operations.* The term ''mining operation'' or ''operations,'' except where otherwise modified or limited in the regulations in this part or in leases thereunder shall mean actual drilling, mining, or construction on the leased lands.

§ 215.1 No operations until lease approved.

No operations under any lease executed under the regulations in this part shall be permitted upon any restricted or trust lands allotted to or inherited by an Indian until such lease covering such tract shall be approved by the Secretary of the Interior.

§ 215.2 Local representative of lessee.

Before actual drilling or development operations are commenced on the leased lands the lessee shall appoint a local or resident representative within Ottawa County, Oklahoma, on whom the superintendent may serve notice or

otherwise communicate with in securing compliance with the regulations, and shall notify the superintendent of the name and post office address of the representative so appointed. In the event of the incapacity or absence from the county of Ottawa of such designated local or resident representative, the lessee shall appoint some person to serve in his stead, and in the absence of such representative or of notice of the appointment of a substitute any employee of the lessee upon the leased premises, or the contractor, or other person in charge of mining operations thereon shall be considered the representative of the lessee for the purpose of service of orders or notices as provided in this part, and service upon any employee, contractor, or other person shall be deemed service on the lessee. Wherever a notice is provided for in the regulations in this part or in the lease from it shall be deemed sufficient if notice has been mailed to the last known address of the lessee or his local or resident representatives, and time shall begin to run with the day next ensuing after the mailing, or from date of delivery of personal notice.

§ 215.3 Manner and time of royalty payments.

All royalties belonging to the lessor shall be paid to the superintendent of the Quapaw Agency at Miami, Okla., or such other official as the Secretary of the Interior may designate, for the benefit of the lessor, not later than 15 days from the 1st of each month for ore and concentrates sold during the preceding month.

§ 215.4 Leases to be sold at public auction.

Except as otherwise provided in the regulations in this part, no lead and zinc mining lease under this part of restricted or trust allotted and inherited Indian lands within and under the Quapaw Indian Agency shall be made except to the highest responsible bidder at public auction.

§ 215.5 Royalty rates.

(a) In leases offered for sale at public auction under the regulations in this part the royalty to be paid by the lessee shall be stipulated at a fixed percent of the gross proceeds of all lead and zinc ores and concentrates extracted from the leased premises, the royalty to be computed and based upon each sale of ore or concentrates separately, the rate of royalty to be determined and fixed by the Secretary of the Interior in the case of each lease prior to the offering of such lease for sale. Subject to the right of the Secretary of the Interior to reject any and all bids, leases offered for sale at public auction shall be awarded in each case to the responsible bidder submitting the highest bonus offer.

(b) In leases not offered for sale at public auction but otherwise made and entered into under the provisions of the regulations in this part the royalty stipulated and fixed therein shall be such as may be determined by the Secretary of the Interior or as may be agreed upon in each case, subject to the approval of the Secretary of the Interior.

(c) It shall be further provided, however, that said sale-price basis for the determination of the rates and amount of royalty shall not be less than the highest and best obtainable market price of the lead and zinc ores and concentrates at the usual and customary place of disposing of such ores and concentrates at the time of sale: *Provided, however,* That the right is reserved to the Secretary of the Interior to determine and declare such market price if it is deemed necessary for him to do so for the protection of the interests of the Indian lessor: *And provided further,* That the right is reserved to the Secretary of the Interior on behalf of the Indian lessors to reserve at any time it shall be deemed to be to the best interests of the Indian lessors and upon due notice to the lessee, the royalty share of the gross production of the ore and concentrates and upon such notice that the royalty share of such production shall be stored and not sold, the lessee shall be required to store, free of charge to the Indian lessors in the ore bins of said lessee, said royalty shares of the gross production of ore and concentrates, provided that the lessee may not be required to store ore or concentrates for the lessor in amounts

greater than one-third of his bin capacity or for a period longer than 6 months.

§215.6 Applications for leases; consent of Indian owners.

(a) Applications or requests by the Indian owners of restricted or trust land, or by others, that such land be leased or offered for lease for lead and zinc mining purposes should be addressed to the Secretary of the Interior and submitted through the superintendent of the Quapaw Indian Agency. Upon receipt of such applications or requests, the superintendent shall give consideration thereto and forward the same to the Commissioner of Indian Affairs with his report and recommendation.

(b) In no instance will a new lease be executed and delivered (or advertised for sale to the highest bidder) unless the Indian owner thereof, if an adult who has not been specifically found by the Secretary of the Interior to be personally incompetent to transact ordinary business affairs, has agreed to the terms of said lease or the terms under which said lease is advertised for lease, except in cases where the land is owned by several co-tenants, and, in such cases, no such lease shall be given or advertised for sale unless the co-owners or a majority in interest, if adults, and not specifically declared incompetent, have first consented thereto: *Provided*, That in the event the majority in interest is owned by minors, or adults specifically found to be incompetent, then and in that event, the Secretary of the Interior reserves the right to lease the entire tract if, in his opinion, such leasing will inure to the best interest of the restricted Indian owners.

§215.7 Advertisement of sale of leases.

Upon authority being granted by the Secretary of the Interior to the superintendent to offer for sale at public auction a lead and zinc mining lease of any tract or tracts of restricted or trust allotted and inherited Indian lands, the superintendent shall cause a notice to be published once a week for at least 4 weeks in some designated newspaper of general circulation in the county in which the land is located, setting forth that upon a certain day, which shall be not less than 30 days from the first publication of such notice and at a place to be named in the notice, the superintendent or other duly authorized representatives of the Secretary of the Interior will offer for sale at public auction a lead and zinc mining lease of such lands to the highest and best bidder, subject to the rules and regulations prescribed by the Secretary of the Interior, notice to be in such form as may be prescribed by the Secretary of the Interior.

§215.8 Submission of bids.

At the time of public auction bidders may submit their bids in person or by authorized agents, but in the latter case the bids must be accompanied by power of attorney duly executed by the real party or person in interest. Sealed bids may be submitted by mail or otherwise to the superintendent at his office at Miami, Okla., or delivered to him at the place set for the sale at any time prior to the hour fixed for offering the lease for sale. At the time and place of the public auction and before receiving the public bids the officer in charge shall announce the amounts and terms of all sealed bids received by him and the names of the bidders. The persons present, including those, if any, who may have theretofore submitted sealed bids, shall then be allowed to offer public bids. Bids must contain the offer of the stipulated and fixed royalty (see §215.5 as to royalty) and, in addition thereto, the offer of a bonus payable as follows: 25 percent at time of sale and the balance before or at time of execution of the lease contract. Bidders shall be required to submit with their bids a draft or certified check payable to the order of the superintendent covering the advance rental for the first year on the proposed leasehold and 25 percent of the amount of the bonus offered. The superintendent shall, in each case, determine the highest and best bid, said determination, however, to be subject to the approval of the Secretary of the Interior. Upon approval by the Secretary of the Interior of the award, the successful bidder shall, within 30 days from notice thereof, enter into and execute the lease contract in accordance with said bid and the regulations in this part. The

lease so executed shall be subject to the approval of the Secretary of the Interior and may be accepted or rejected by him when submitted for his approval. The right is reserved to the Secretary of the Interior, in the event of the rejection of such lease, to authorize and instruct the superintendent to accept the offer of some competitive bidder or to readvertise the land for lease. The report of the superintendent to the Commissioner of Indian Affairs relative to the auction sale shall contain full information as to all bids received for the lease rights on the land. If any person or party fails or refuses to execute a lease after being declared the highest bidder or after being awarded such lease, the amount tendered with his bid shall be forfeited to the superintendent for the benefit of the owner of the land.

§ 215.9 Execution of leases.

Whenever a lease award to a proposed lessee has been approved by the Secretary of the Interior, as provided in §§ 215.7 and 215.8, the lease contract shall be executed by the Indian owner of the land, if he be an adult and not incompetent as defined in § 215.0(c). Before any lease is entered into by the Indian owners or is approved by the Secretary of the Interior, all the adult and competent owners or co-owners of the tract of land which it is proposed to lease, shall be furnished by the Bureau such geological reports as may be available or that can be secured from the representative of the Geological Survey showing the estimated mineral reserves on said property, the estimated reasonable value of such property for mining purposes, and such other data as might reasonably be necessary to fully advise the owners of said property of the then present status and mining value of their lands. If the Quapaw or other Indian owner of the land is a minor, or is otherwise an incompetent as defined in the regulations in this part, the lease contract shall be executed by the superintendent for and on behalf of such minor or such incompetent. The leases executed, either by the Indian owner of the land or by the superintendent in his behalf, shall be subject to the approval of the Secretary of the Interior and shall be effective only upon such approval.

[22 FR 10608, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982; 48 FR 13414, Mar. 31, 1983]

§ 215.10 Renewal of leases on developed lands.

(a) In cases where the lands have heretofore been leased, and lead and zinc ores have been discovered hereon, and it shall appear to the Secretary of the Interior to be advisable and to the best interests of the Indian owners of the lands that the terms of the existing lease or leases be extended or that a new lease or leases for an additional period of time, or that a new lease or leases to take effect upon the expiration of present valid leases, should, upon application therefor, be granted to either the present lessees or to parties holding under assignments, subleases, or mining contracts, from such present lessees, or to parties who have expended capital in lead and zinc mining operation and development of the land under such leases, assignments, subleases, or mining contracts, a new lease or leases or contract of extension or existing lease or leases as may be authorized by the Secretary of the Interior may be entered into with the proper party or parties as may be determined by said Secretary of the Interior, and such new lease or leases or contract of extension of existing lease or leases shall be executed subject to the regulations in this part by and between the Indian owner of the land, if an adult and not incompetent as defined in § 215.0 (c), and said proper party or parties. If the Quapaw or other Indian owner of the land is a minor or an otherwise incompetent as defined in § 215.0 (c), the superintendent shall execute the new lease or leases or contract of extension of existing lease or leases for and on behalf of said Indian minor or incompetent. Said new leases or contracts of extension of old leases, whether executed by the Indian owner of the land or by the superintendent for and in his behalf, shall be subject to the approval of the Secretary of the Interior and shall become effective only upon such approval. No offering for sale at public auction or advertisement of sale

will be necessary in reference to contracts of extension of leases, or to leases entered into under this section, as above provided, but such lease or contract shall be upon such terms as to bonus and royalty as may be determined and fixed in each case by the Secretary of the Interior under the provisions of § 215.5. The approval by the Secretary of the Interior of new leases or of the contracts of extension of old leases shall be conclusive as to the validity of said leases, or contracts of extension of leases, the manner and method of negotiating the same, and the execution thereof. If, however, in any case where lands have heretofore been leased and lead and zinc ores have been discovered thereon, it shall appear to the Secretary of the Interior that the extension of the existing lease or leases or the granting of new leases to the present lessees, or to the persons or parties holding under said lessees by assignment, sublease, or mining contract, would not be to the best interests of the Indian owners of the land, the Secretary of the Interior may, at the expiration, cancellation, or forfeiture of the existing lease, cause the mining lease rights on said land to be offered for sale at public auction to the highest bidder. If the lead and zinc mining lease on said land be offered for sale at public auction, the same procedure shall be followed as provided in §§ 215.7 through 215.9.

(b) Applications under the provision of this section for a lease or extension of lease or for the approval of such lease or extension of lease will not be received or considered prior to the period of 1 year next preceding the date of the expiration of such valid existing lease or leases as may be on the land covered by such application.

(c) Applications under the provisions of this section for a lease or extension of lease or for the approval of such lease or extension of lease shall be filed with the superintendent of the Quapaw Agency at any time within the period of 1 year next preceding the date of the expiration of such valid existing lease or leases as may be on the land covered by such application, and if the records of or papers in the office of said superintendent or the records of the county court of Ottawa County, Okla., indicate that there are any prior existing leases, subleases, assignments of leases or mining contracts covering any of the land applied for, the superintendent shall notify all persons having or claiming any rights or interest in or under said prior existing leases, subleases, assignments of leases, or mining contract concerning said application for lease or extension of lease, and that they will be allowed 10 days in which to file with the superintendent any objection they may have to the allowance of the application or to the approval of the new lease or extension of existing lease. If objection or protest is made by any owner of the land or by any person claiming rights or interests in or under existing lease, sublease, assignment of lease, or mining contract, a reasonable time, not exceeding 20 days, shall be allowed them in which to file their statement or brief in support of their protest or objection, and a reasonable further time not exceeding 10 days shall be allowed the applicant for new lease or for extension of existing lease to reply in support of the application. In case of contest, hearings may be had if deemed necessary by the Secretary of the Interior or his representative. The application and papers in each case shall be forwarded by the superintendent of the Quapaw Indian Agency to the Commissioner of Indian Affairs with his report and recommendation in regard thereto.

§ 215.11 New leases where prior leases have been forfeited or abandoned.

In cases where the lands have heretofore been leased and lead and zinc ores have been discovered but the mines and mining operations have been abandoned and the leases have been canceled or forfeited or have expired, special arrangements in the matter of the leasing and mining of said lands may be made provided the consent thereto of the Secretary of the Interior be first obtained. Applications containing special offers as to the terms and conditions may be considered by the Secretary of the Interior and the leasing of said lands may be made upon such special terms and conditions as the Secretary of the Interior may in each case deem to be for the best interests of the Indian owners of the land.

If, however, in any case, it shall appear to the Secretary of the Interior that the granting of such lease would not be to the best interest of the Indian owners of the land, the Secretary of the Interior may cause the mining lease rights on said land to be offered for sale at public auction to the highest bidder. If the lead and zinc mining lease on said land be offered for sale at public auction, the same procedure shall be followed as provided in §§ 215.7 through 215.9.

§ 215.12 Advertising costs.

All advertising costs, publication fees, expenses incurred for abstracts of lease title, and other expenses incurred in connection with the advertising and sale of leases and in connection with the execution of lease contracts shall be borne by the lessee. In the event a lease of the land is offered to the highest bidder and he fails or refuses to execute such lease when duly notified and as required by or under the regulations in this part, and no other bid is accepted, such costs, fees, and expenses shall be paid from such money as he may have paid with his bid. If no bid is tendered after a tract is advertised, or if all bids are refused, said items of expenses shall be charged to the Indian owner of the land and be paid by him or be paid by the superintendent from any funds held by such superintendent to the credit of such Indian owner of the land.

§ 215.13 Bond.

Every mineral lease made and entered into under the regulations in this part, by an Indian or by the superintendent as his representative or in his behalf, must be accompanied by a surety bond, executed by the lessee and by a responsible surety company or two or more satisfactory sureties, guaranteeing the payment of all deferred installments of bonus and the payment of all specified royalties and rentals and the performance of all covenants and agreements undertaken by the lessee. Such bonds, unless authorized by the Secretary of the Interior or his authorized representative, with the consent of the Indian landowner, shall be not less than the following amounts:

For less than 80 acres—$2,500
For 80 acres and less than 120 acres—3,500
For 120 acres or more—5,000

Provided, however, That the lessee may, in lieu of such surety bond and upon execution of a proper penal bond to the United States in the sum prescribed and a proper power of attorney to the Secretary of the Interior, submit therewith United States bonds or notes in the aggregate sum prescribed as security for the carrying out of the terms, conditions, and provisions of the lease: *Provided further,* That a lessee may file in lieu of such individual lease bonds, one bond in a sum to be fixed by the Secretary of the Interior covering all leases to which he is or may become a party. The right is specifically reserved to the Secretary of the Interior to require an increase of the amount of any bond above the sum named in any particular case where he deems it necessary to require such increased bond.

[26 FR 164, Jan. 10, 1961. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 215.14 Payments to be made to superintendent.

No bonus, rents, royalties, nor other payments accruing under any mineral lease executed in accordance with or subject to the regulations in this part and approved by the Secretary of the Interior shall be paid direct to the Indian lessor; but all such bonus, rents, royalties, and other payments accruing under any such lease shall be paid to the superintendent for the benefit of the Indian lessors, to be deposited by that officer to the credit of the superintendent in some bank designated for the deposit of individual Indian moneys.

§ 215.15 Leases to be accompanied by Form D.

Lead and zinc leases should be accompanied, when filed, with application for approval (Form D)[1] made under oath, and said application shall set forth the information therein required.

[1] For further information concerning forms, see § 215.19.

§ 215.16 Requirements of corporate lessees.

(a) When the lessee is a corporation, its first application must be accompanied by a sworn statement of its proper officers showing:

(1) The total number of shares of the capital stock actually issued and, specifically, the amount of cash paid into the treasury on each share sold; or, if paid in property, state kind, quantity, and value of the same paid per share.

(2) Of the stock sold how much per share remains unpaid and subject to assessment.

(3) How much cash the company has in its treasury and elsewhere and from what source it was received.

(4) What property, exclusive of cash, is owned by the company and its value.

(5) What the total indebtedness of the company is, and, specifically, the nature of its obligations.

(b) Subsequent applications of the corporation should show briefly the aggregate amounts of assets and liabilities.

§ 215.17 Additional information required.

Corporations, with their first application, must file one certified copy of articles of incorporation and, if a foreign corporation, evidence showing compliance with local corporation laws; also a list showing officers and stockholders, with post-office addresses and number of shares held by each. Statements of any changes of officers or any changes or additions of stockholders must be furnished to the Indian superintendent on January 1 of each year and at any time when requested. The right is reserved to the Secretary of the Interior to require of individual stockholders affidavits setting forth in what companies or with what persons or firms they are interested in lead and zinc mining leases, or land under the jurisdiction of the Quapaw Indian Agency, and whether they hold such stock for themselves or in trust. Evidence must also be given in a single affidavit (Form I) by the Secretary of the company or by the president of said company, showing authority of the officers of the company to execute the lease, bond, and other papers.

§ 215.18 Term of leases.

The term of lead and zinc mining leases executed pursuant to acts of Congress and under the regulations in this part shall be for such period of time as may be determined in each case by the Secretary of the Interior, but in no case shall a lease be made to extend beyond the restriction or trust period on the lands covered by such lease.

§ 215.19 Forms.[2]

Application, leases, and other papers must be upon forms prescribed by the Secretary of the Interior. Except as may be otherwise provided and required by the Secretary of the Interior, the leases and other papers required under the regulations in this part shall be in conformity with the forms designated, respectively, as follows:

Form A. Lease of Quapaw Indian land.

Form B. For lease of Indian land other than Quapaw.

Form C. Application by Indian.

Form D. Application for approval of lease.

Form E. Affidavit of lessor (or of superintendent acting for him) and affidavit of lessee.

Form F. Surety bond.

Form G. Affidavit of surety on personal bond.

Form H. Certificate as to sufficiency of surety on personal bond.

Form I. Affidavit as to authority of officers of corporation to execute lease and other papers.

Form J. Penal bond (in lieu of surety bond), and accompanying power of attorney.

Form K. Assignment of lead and zinc lease.

§ 215.20 Assignment.

Leases granted or approved under the regulations in this part may be assigned and the leased premises may be subleased or sublet, but only with the consent and authority of the Secretary of the Interior and subject to his approval as to the terms and conditions of such assignments, sublease, and subletting contracts and not otherwise, and provided also that the proposed assignees, sublessee, or sublettee shall be qualified to hold such lease under the regulations in this part and shall furnish such bond as may be required by

[2] Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

the Secretary of the Interior, such bond to be with responsible surety to the satisfaction of the Secretary of the Interior and conditioned for the faithful performance of the covenants and conditions of the lease. Upon the filing with the Indian agent of such assignment, financial statement, and bond, the said agent shall at once give notice in writing to all restricted Indian owners of said land, advising them of said proposed assignment, and that if they have any bona fide objections to same, such objections must be filed in writing within 10 days from the date of said notice.

§ 215.21 Payment of gross production tax on lead and zinc.

The superintendent of the Quapaw Indian Agency is hereby authorized and directed to pay at the appropriate times, from the respective individual Indian funds held under his supervision, such gross production tax due the State on production of lead and zinc from restricted lands under his jurisdiction as may be properly assessed under provisions of law against the royalty interests of the respective Indian owners in the mineral produced from their lands.

§ 215.22 Operations.

(a) All shafts shall be securely cribbed to a point at least 8 inches above the immediate surrounding surface and cribbing shall be maintained in good condition during the life of the mining lease: *Provided, however,* That at any time shafts may be permanently sealed by a reinforced concrete slab after first obtaining the written approval of the duly authorized representative of the Department of the Interior. The slab shall be so placed as to prevent caving of the ground around the shaft collar.

(b) All shafts, prior to the expiration, surrender, or upon cancellation of the mining lease or abandonment of the property, shall be permanently sealed so as to prevent the caving of the ground around the shaft collar: *Provided, however,* That this requirement may be waived after first obtaining the written consent of the duly authorized representative of the Department of the Interior.

(c) All shaft entrances not permanently sealed shall be so fenced, boxed, or covered as to prevent persons or animals from falling into the mine when the shaft is not in actual use, and such fencing, boxing, or covering shall be maintained in good condition during the life of the mining lease.

(d) All shafts where hoisting is done shall be boxed or fenced on three sides and the fourth side equipped with a gate which shall be kept closed when access to the shaft is not necessary.

(e) All churn drill holes shall be securely plugged to the surface unless used for ventilation or other mining purposes, in which case they shall be cased or otherwise prevented from caving or becoming a hazard to persons or animals. If cased, the casing shall extend 4 feet above the collar of the hole.

§ 215.23 Cooperation between superintendent and district mining supervisor.

(a) The district mining supervisor of the Miami field office, Geological Survey, directly or through his assistants, shall receive from lessees for the superintendent, all notices, reports, drill logs, maps, and records, and all other information relating to mining operations required by said regulations to be submitted by lessees, and shall maintain a file thereof for the superintendent.

(b) The files of the Geological Survey supervisor relating to lead and zinc leases of Quapaw Indian lands shall be at all times available for inspection and use by authorized employees of the Bureau of Indian Affairs, and the employees of the Geological Survey assigned to work relating to Indian lands shall furnish to authorized employees of the Bureau of Indian Affairs such information and technical advice as may be necessary or appropriate to the most efficient cooperation in the conduct of the work assigned to the two bureaus. Likewise, similar facilities and service shall be provided for the benefit of the authorized employees of the Geological Survey by the Bureau of Indian Affairs.

(c) No orders of any kind will be issued by Geological Survey representatives to any Indian, but such representatives shall have full authority to issue

and amend orders to operators relative to production and operations: i.e., the supervision of all operations, including safety and efficiency, health and sanitation, and prevention of material or economic waste, such orders to be prepared with the advice of the local representative of the Bureau of Indian Affairs.

CROSS REFERENCE: For regulations of the Geological Survey, see 30 CFR chapter II.

§215.23a Suspension of operations and production on leases for minerals other than oil and gas.

The provisions of §212.15a of this subchapter are applicable to leases under this part.

[24 FR 9511, Nov. 26, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

§215.24 Books and accounts.

(a) The lessee shall maintain books in which shall be kept a correct account of all ore and rock mined on the tract, of all ore put through the mill, of all lead and zinc concentrates produced, and of all ore and concentrates sold and to whom sold, the weight, assay value, moisture content, base price, dates, penalties, and price received, and the percentage of lead and zinc recovered. A correct statement of the same for each month shall be furnished the office of the district mining supervisor pursuant to §215.23 not later than 15 days after the first of each month for the preceding month, together with a certificate from the smelter showing the unit price paid for the mineral purchased and the amount of ore and concentrates purchased during the month from said land.

(b) An audit of the lessee's accounts and books shall be made semiannually, or at such other times as may be directed by the Secretary of the Interior, by certified public accountants, approved by the Secretary, and at the expense of the lessee. The lessee shall furnish free of cost a copy of such semiannual or other audit, through the office of the district mining supervisor pursuant to §215.23, within 30 days after the completion of each auditing.

§215.25 Other minerals and deep-lying lead and zinc minerals.

Except as provided in §215.6(b), leases on Quapaw Indian lands, for mining minerals other than lead and zinc and for lead and zinc and associated minerals below the horizon of the rock stratum known as the Reed Springs Formation, shall be made pursuant to the provisions of part 212 of this subchapter.

[26 FR 1910, Mar. 4, 1961. Redesignated at 47 FR 13327, Mar. 30, 1982]

PART 216—SURFACE EXPLORATION, MINING, AND RECLAMATION OF LANDS

Subpart A—General Provisions

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AUTHORITY: 34 Stat. 539, 35 Stat. 312; 25 U.S.C. 355 NT; 35 Stat 781; 25 U.S.C. 396; sec. 1, 49 Stat. 1250; 25 U.S.C. 473a; 49 Stat. 1967, 25 U.S.C. 501, 502; 52 Stat. 347, 25 U.S.C. 396a–f; 5 U.S.C. 301.

Subpart A—General Provisions

SOURCE: 34 FR 813, Jan. 18, 1969, unless otherwise noted. Redesignated at 42 FR 63394, Dec. 16, 1977; and further redesignated at 47 FR 13327, Mar. 30, 1982.

§216.1 Purpose.

It is the policy of this Department to encourage the development of the mineral resources underlying Indian lands where mining is authorized. However, interest of the Indian owners and the public at large requires that, with respect to the exploration for, and the

surface mining of, such minerals, adequate measures be taken to avoid, minimize, or correct damage to the environment—land, water, and air—and to avoid, minimize, or correct hazards to the public health and safety. The regulations in this part prescribe procedures to that end.

§ 216.2 Scope.

(a) Except as provided in paragraph (b) of this section, the regulations in this part provide for the protection and conservation of nonmineral resources during operations for the discovery, development, surface mining, and onsite processing of minerals under permits or leases issued pursuant to statutes pertaining to Indian lands including but not limited to the following statutes or amendments thereto:

The Act of June 28, 1906 (34 Stat. 539);
The Act of May 27, 1908 (35 Stat. 312);
The Act of March 3, 1909 (35 Stat. 781, 25 U.S.C. 396);
The Act of May 1, 1936 (49 Stat. 1250);
The Act of June 26, 1936 (49 Stat. 1967);
The Act of May 11, 1939 (52 Stat. 347, 25 U.S.C. 396a–f, and 5 U.S.C. 301).

(b) The regulations in this part do not cover the exploration for oil and gas or the issuance of leases, or operations thereunder, nor minerals underlying lands, the surface of which is not owned by the owner of the minerals.

(c) The regulations in this part shall apply only to permits or leases issued subsequent to the date on which these regulations become effective and which are subject to the approval of the Secretary of the Interior or his designated representative.

§ 216.3 Definitions.

As used in the regulations in the part:

(a) ''Superintendent'' means the superintendent or other officer of the Bureau of Indian Affairs having jurisdiction under delegated authority, over the lands involved.

(b) ''Mining supervisor'' means the Regional Mining Supervisor, or his authorized representative, of the Geological Survey authorized as provided in 30 CFR 211.3 and 231.2 to supervise operations on the land covered by a permit or lease.

(c) ''Overburden'' means all the earth and other materials which lie above a natural deposit of minerals and such earth and other materials after removal from their natural state in the process of mining.

(d) ''Area of land to be affected'' or ''area of land affected'' means the area of land from which overburden is to be or has been removed and upon which the overburden or waste is to be or has been deposited, and includes all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to an operation and for haulage.

(e) ''Operation'' means all of the premises, facilities, roads, and equipment used in the process of determining the location, composition or quality of a mineral deposit, or in developing, extracting, or onsite processing of a mineral deposit in a designated area.

(f) ''Method of operation'' means the method or manner by which a cut or open pit is made, the overburden is placed or handled, water is controlled or affected and other acts performed by the operator in the process of exploring or uncovering and removing or onsite processing of a mineral deposit.

(g) ''Holder'' or ''operator'' means the permittee or lessee designated in a permit or lease.

(h) ''Reclamation'' means measures undertaken to bring about the necessary reconditioning or restoration of land or water that has been affected by exploration or mineral development, mining or onsite processing operations, and waste disposal, in ways which will prevent or control onsite and offsite damage to the environment.

§ 216.4 Technical examination of prospective surface exploration and mining operations.

(a)(1) In connection with an application for a permit or lease, the superintendent shall make, or cause to be made, a technical examination of the prospective effects of the proposed exploration or surface mining operations upon the environment. The technical examination shall take into consideration the need for the preservation and protection of other resources, including cultural, recreational, scenic, historic, and ecological values; and control of

erosion, flooding, and pollution of water; the isolation of toxic materials; the prevention of air pollution; the reclamation by revegetation, replacement of soil or by other means, of lands affected by the exploration or mining operations; the prevention of slides; the protection of fish and wildlife and their habitat; and the prevention of hazards to public health and safety.

(2) A technical examination of an area should be made with the recognition that actual potential mining sites and mining operations vary widely with respect to topography, climate, surrounding land uses, proximity to densely used areas, and other environmental influences and that mining and reclamation requirements should provide sufficient flexibility to permit adjustment to local conditions.

(b) Based upon the technical examination, the superintendent shall formulate the general requirements which the applicant must meet for the protection of nonmineral resources during the conduct of exploration or mining operations and for the reclamation of lands or waters affected by exploration or mining operations. The general requirements shall be made known in writing to the applicant before the issuance of a permit or lease and upon acceptance thereof by the applicant, shall be incorporated in the permit or lease.

(c) In each instance in which an application is made the mining supervisor shall participate in the technical examination and in the formulation of the general requirements.

(d) The superintendent may prohibit or otherwise restrict operations on any part of an area whenever it is determined that such part of the area described in an application for a permit or lease is such that previous experience under similar conditions has shown that operations cannot feasibly be conducted by any known methods or measures to avoid—

(1) Rock or landslides which would be a hazard to human lives or endanger or destroy private or public property; or

(2) Substantial deposition of sediment and silt into streams, lakes, reservoirs; or

(3) A lowering of water quality below standards established by the appropriate State water pollution control agency, or by the Secretary of the Interior, or his authorized representative; or

(4) A lowering of the quality of waters whose quality exceeds that required by the established standards—unless and until it has been affirmatively demonstrated to the Secretary of the Interior, or his authorized representative, that such lowering of quality is necessary to economic and social development and will not preclude any assigned uses made of such waters; or

(5) The destruction of key wildlife habitat or important scenic, historical, or other natural or cultural features.

(e) If, on the basis of a technical examination, the superintendent determines that there is a likelihood that there will be a lowering of water quality as described in paragraphs (d) (3) and (4) of this section caused by the operation, no lease or permit shall be issued until after consultation with the Federal Water Pollution Control Administration and a finding by the Administration that the proposed operation would not be in violation of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), or of Executive Order No. 11288 (31 FR 9261). Where a permit or lease is involved the Superintendent's determination shall be made in consultation with the mining supervisor.

§ 216.5 Basis for denial of a permit or lease.

An application for a permit or lease to conduct exploratory or mining operations may be denied any applicant who has forfeited a required bond because of failure to comply with a mining plan. However, a permit or lease may not be denied an applicant because of the forfeiture of a bond if the lands disturbed under his previous permit or lease have subsequently been reclaimed without cost to the lessor or the United States.

§ 216.6 Approval of exploration plan.

(a) Before commencing any surface disturbing operations to explore, test or prospect for minerals, the operator shall file with the mining supervisor a plan for the proposed exploration operations. The mining supervisor shall

consult with the superintendent with respect to the surface protection and reclamation aspects before approving said plan.

(b) Depending upon the size and nature of the operation and the requirements established pursuant to § 216.4 the mining supervisor may require that the exploration plan submitted by the operator include any or all of the following:

(1) A description of the area within which exploration is to be conducted;

(2) Two copies of a suitable map or aerial photograph showing topographic, cultural and drainage features;

(3) A statement of proposed exploration methods; i.e., drilling, trenching, etc., and the location of primary support roads and facilities;

(4) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, and hazards to public health and safety both during and upon abandonment of exploration activities.

(c) The mining supervisor shall promptly review the exploration plan submitted to him by the operator and shall indicate to the operator any changes, additions, or amendments necessary to meet the requirements formulated pursuant to § 216.4, the provisions of these regulations, and the terms of the permit.

(d) The operator shall comply with the provisions of an approved exploration plan. The mining supervisor may, with respect to such a plan, exercise the authority provided by paragraphs (f) and (g) of § 216.7 respecting a mining plan.

§ 216.7 Approval of mining plan.

(a) Before surface mining operations may commence under any permit or lease, the operator must file a mining plan with the mining supervisor and obtain his approval of the plan. The mining supervisor shall consult with the superintendent with respect to the surface protection and reclamation aspects before approving said plan.

(b) Depending on the size and nature of the operation and the requirements established pursuant to § 216.4 the mining supervisor may require that the mining plan submitted by the operator include any or all of the following:

(1) A description of the location and area to be affected by the operations;

(2) Two copies of a suitable map, or aerial photograph showing the topography, the area covered by the permit or lease, the name and location of major topographic and cultural features, and the drainage plan away from the area affected;

(3) A statement of proposed methods of operating, including a description of proposed roads or vehicular trails; the size and location of structures and facilities to be built;

(4) An estimate of the quantity of water to be used and pollutants that are expected to enter any receiving waters;

(5) A design for the necessary impoundment, treatment or control of all runoff water and drainage from workings so as to reduce soil erosion and sedimentation and to prevent the pollution of receiving waters;

(6) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife, and hazards to public health and safety; and

(7) A statement of the proposed manner and time of performance of work to reclaim areas disturbed by the holder's operation.

(c) In those instances in which the permit or lease requires the revegetation of an area of land to be affected, the mining plan shall show:

(1) Proposed methods of preparation and fertilizing the soil prior to replanting;

(2) Types and mixtures of shrubs, trees, or tree seedlings, grasses or legumes to be planted; and

(3) Types and methods of planting, including the amount of grasses or legumes per acre, or the number and spacing of trees, or tree seedlings, or combinations of grasses and trees.

(d) In those instances in which the permit or lease requires regrading and backfilling, the mining plan shall show the proposed methods and the timing of grading and backfilling of areas of land to be affected by the operation.

(e) The mining supervisor shall review the mining plan submitted to him by the operator and shall promptly indicate to the operator any changes, additions, or amendments necessary to meet the requirements formulated pursuant to §216.4, the provisions of these regulations and the terms of the permit or lease. The operator shall comply with the provisions of an approved mining plan.

(f) A mining plan may be changed by mutual consent of the mining supervisor and the operator at any time to adjust to changed conditions or to correct any oversight. To obtain approval of a change or supplemental plan, the operator shall submit a written statement of the proposed changes or supplement and the justification for the changes proposed. The mining supervisor shall promptly notify the operator that he consents to the proposed changes or supplement, or in the event he does not consent, he shall specify the modifications thereto under which the proposed changes or supplement would be acceptable. After mutual acceptance of a change of a plan, the operator shall not depart therefrom without further approval.

(g) If circumstances warrant or if development of a mining plan for the entire operation is dependent upon unknown factors which cannot or will not be determined except during the progress of the operations, a partial plan may be approved and supplemented from time to time. The operator shall not, however, perform any operation except under an approved plan.

§216.8 Performance bond.

(a) Upon approval of an exploration plan or mining plan, the operator shall be required to file a suitable performance bond of not less than $2,000 with satisfactory surety, payable to the Secretary of the Interior, and the bond shall be conditioned upon the faithful compliance with applicable regulations, the terms and conditions of the permit, lease, or contract, and the exploration or mining plan as approved, amended or supplemented. The bond shall be in an amount sufficient to satisfy the reclamation requirements established pursuant to an approved exploration or mining plan, or an approved partial or supplemental plan. In determining the amount of the bond consideration shall be given to the character and nature of the reclamation requirements and the estimated costs of reclamation in the event that the operator forfeits his performance bond. In lieu of a surety bond an operator may elect to deposit cash or negotiable bonds of the U.S. government. The cash deposit or the market value of such securities shall be equal at least to the required sum of the bond.

(b) In a particular instance where the circumstances are such as to warrant an exception, the amount of the bond for a particular operation may be reduced to less than the required minimum of $2,000.

(c) The superintendent shall set the amount of a bond and take the necessary action for an increase or for a complete or partial release of a bond. He shall take action with respect to bonds for leases or permits only after consultation with the mining supervisor.

§216.9 Reports.

(a) Within 30 days after the end of each calendar year, or if operations cease before the end of a calendar year, within 30 days after the cessation of operations, the operator shall submit an operations report to the mining supervisor containing the following information:

(1) An identification of the permit or lease and the location of the operation.

(2) A description of the operations performed during the period of time for which the report is filed.

(3) An identification of the area of land affected by the operations and a description of the manner in which the land has been affected.

(4) A statement as to the number of acres disturbed by the operations and the number of acres which were reclaimed during the period of time.

(5) A description of the method utilized for reclamation and the results thereof.

(6) A statement and description of reclamation work remaining to be done.

(b) Upon completion of such grading and backfilling as may be required by an approved exploration or mining

plan, the operator shall make a report thereon to the mining supervisor and request inspection for approval. Whenever it is determined by such inspection that backfilling and grading have been carried out in accordance with the established requirements and approved exploration or mining plan, the superintendent shall issue a release of an appropriate amount of the performance bond for the area graded and backfilled. Appropriate amounts of the bond shall be retained to assure that satisfactory planting, if required, is carried out.

(c)(1) Whenever planting is required by an approved exploration or mining plan, the operator shall file a report with the superintendent whenever such planting is completed. The report shall—

(i) Identify the permit or lease;

(ii) Show the type of planting or seeding, including mixtures and amounts;

(iii) Show the date of planting or seeding;

(iv) Identify or describe the areas of the lands which have been planted;

(v) Contain such other information as may be relevant.

(2) The superintendent, as soon as possible after the completion of the first full growing season, shall make an inspection and evaluation of the vegetative cover and planting to determine if a satisfactory growth has been established.

(3) If it is determined that a satisfactory vegetative cover has been established and is likely to continue to grow, any remaining portion of the surety bond may be released if all requirements have been met by the operator.

(d)(1) Not less than 30 days prior to cessation or abandonment of operations, the operator shall report to the mining supervisor his intention to cease or abandon operations, together with a statement of the exact number of acres of land affected by his operations, the extent of reclamation accomplished and other relevant information.

(2) Upon receipt of such report an inspection shall be made to determine whether operations have been carried out in accordance with the approved exploration or mining plan.

§ 216.10 Inspection: Notice of noncompliance: Revocation.

(a) The mining supervisor and superintendent shall have the right to enter upon the lands under a permit or lease, at any reasonable time, for the purpose of inspection or investigation to determine whether the terms and conditions of the permit or lease and the requirements of the exploration or mining plan have been complied with.

(b) If the mining supervisor determines that an operator has failed to comply with the terms and conditions of a permit or lease, or with the requirements of an exploration or mining plan, or with the provisions of applicable regulations, the superintendent shall serve a notice of noncompliance upon the operator by delivery in person to him or his agent or by certified or registered mail addressed to the operator at his last known address.

(c) A notice of noncompliance shall specify in what respects the operator has failed to comply with the terms and conditions of a permit or lease or the requirements of an exploration or mining plan, or the provisions of applicable regulations, and shall specify the action which must be taken to correct the noncompliance and the time limits within which such action must be taken.

(d) Failure of the operator to take action in accordance with the notice of noncompliance shall be grounds for suspension by the mining supervisor of operations or for the initiation of action for the cancellation of the permit or lease and for forfeiture of the surety bond required under § 216.8.

§ 216.11 Appeals.

An applicant, permittee, lessee, or lessor aggrieved by a decision or order of a mining supervisor or superintendent may appeal such decision or order. An appeal from a decision or order of a superintendent shall be made pursuant to 25 CFR part 2. An appeal from a decision or order of a mining supervisor shall be made pursuant to 30 CFR parts 211 and 231.

§ 216.12 Consultation.

A superintendent shall consult with the Indian landowner with respect to

actions he proposes to take under §§216.4, 216.6, 216.7, 216.9, and 216.10.

PART 217—MANAGEMENT OF TRIBAL ASSETS OF UTE INDIAN TRIBE, UINTAH AND OURAY RESERVATION, UTAH, BY THE TRIBE AND THE UTE DISTRIBUTION CORP.

Sec.
217.1 Definitions.
217.2 Authority and purpose.
217.3 Referral of questions by superintendent.
217.4 Referral of questions by the joint managers.
217.5 Management decisions.
217.6 Method of casting votes.
217.7 Implementation of decision.

AUTHORITY: Secs. 27 and 28 of the Act of August 27, 1954, 68 Stat. 868 (25 U.S.C. 677–677aa); 5 U.S.C. 301; secs. 463, 465 of the Revised Statutes (25 U.S.C. 2 and 9) and 230 DM 1 and 2.

SOURCE: 43 FR 40458, Sept. 12, 1978, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§217.1 Definitions.

As used in this part:

''Assets'' means all unadjudicated or unliquidated claims against the United States, all gas, oil, and mineral rights of every kind, and all other assets of the Ute Tribe of Uintah and Ouray Reservation as constituted on August 27, 1954, not distributed in accordance with the terms of the Ute Partition Act.

''Business Committee'' means the Uintah and Ouray Tribal Business Committee, created pursuant to the provisions of the constitution and bylaws of the Ute Indian Tribe of the Uintah and Ouray Reservation.

''Board of directors'' means the board of directors of the Ute Distribution Corp., a corporation organized and existing under the laws of the State of Utah.

''Joint manager'' or ''joint managers'' means the business committee and the board of directors, or either of them, as is appropriate, within the context where one of those terms is used.

''Superintendent'' means the superintendent of the Uintah and Ouray Agency, Bureau of Indian Affairs.

''Secretary'' means the secretary of the Interior or a subordinate official acting pursuant to authority delegated by said Secretary.

§217.2 Authority and purpose.

In accordance with the Ute Partition Act approved August 27, 1954 (68 Stat. 868; 25 U.S.C. 677–677aa), as amended by the Act of August 2, 1956 (70 Stat. 936), and the Act of September 25, 1962 (76 Stat. 597), assets shall be managed jointly by the business committee and the board of directors. These regulations set out the procedures for exercising such joint management.

§217.3 Referral of questions by superintendent.

The superintendent shall refer all questions and problems related to the management of the assets as they come to his attention, together with his analysis of alternative solutions to each question or problem, to the business committee and to the board of directors for resolution. Such referrals shall be in writing and shall be addressed to the joint managers at such addresses as they furnish to the superintendent and to each other from time to time.

§217.4 Referral of questions by the joint managers.

The business committee and the board of directors must refer to each other for resolution any questions or problems related to joint management of the assets which they from time to time determine need to be resolved together with the submitting party's proposal, if any, for solution. Such referrals shall be in writing, addressed to the other joint manager at the address furnished in accordance with §217.3 of this part. Copies of all such referrals shall also be furnished to the superintendent. Either of the parties may request an analysis of alternative solutions of each question or problem referred pursuant to this section, and the superintendent will furnish such analysis within ten working days, or within such longer period as he may notify the parties is required to prepare such analysis.

§217.5 Management decisions.

In arriving at management decisions concerning the assets, the business

committee shall be entitled to cast 72.83814 votes and the board of directors shall be entitled to cast 27.16186 votes. Any total number of votes cast exceeding 50 shall be sufficient to determine an issue submitted to the joint managers for resolution. A majority of votes cast will decide an issue.

§ 217.6 Method of casting votes.

Within 30 days after an issue and any analysis provided for in §§ 217.4 and 217.5 have been submitted to the joint managers for resolution, they shall each notify the superintendent in writing of the number of votes cast for and against the proposed or alternative solutions. If either of the joint managers fails or refuses to cast his votes and to notify the superintendent thereof within the time specified, the superintendent may conclude that such joint managers' votes have been cast against the proposed solution or solutions; or, if no solutions have been proposed, for the maintenance of the status quo. At the time they notify the superintendent of the votes cast on an issue, each joint manager shall furnish to the superintendent a certified copy of a resolution of the business committee or the board of directors, as the case may be, authorizing such vote.

§ 217.7 Implementation of decision.

The Secretary shall issue such documents as are necessary or expendient to implement the decisions of the joint managers, insofar as such issuance is authorized by law, and he shall execute and/or approve such documents for and on behalf of the joint managers, or either of them, and on behalf of the United States, as necessary. If it becomes necessary for the Secretary to execute an instrument on behalf of one or both of the joint managers and to approve the same instrument as trustee, two different officials having delegated authority from the Secretary shall serve as executing and approving officers, respectively.

PART 225—OIL AND GAS, GEOTHERMAL, AND SOLID MINERALS AGREEMENTS

Subpart A—General

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225.2 Information collection.
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225.4 Authority and responsibility of the Bureau of Land Management (BLM).
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225.28 Approval of amendments to minerals agreements.
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225.30 Bonds.
225.31 Manner of payments.
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225.36 Minerals agreement cancellation; Bureau of Indian Affairs notice of noncompliance.
225.37 Penalties.
225.38 Appeals.
225.39 Fees.
225.40 Government employees cannot acquire minerals agreements.

AUTHORITY: Indian Mineral Development Act of 1982, 25 U.S.C. 2101–2108; and 25 U.S.C. 2 and 9.

SOURCE: 59 FR 14971, Mar. 30, 1994, unless otherwise noted.

Subpart A—General

§ 225.1 Purpose and scope.

(a) The regulations in this part, administered by the Bureau of Indian Affairs under the direction of the Secretary of the Interior, govern minerals

agreements for the development of Indian-owned minerals entered into pursuant to the Indian Mineral Development Act of 1982, 25 U.S.C. 2101–2108 (IMDA). These regulations are applicable to the lands or interests in lands of any Indian tribe, individual Indian or Alaska native the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. These regulations are intended to ensure that Indian mineral owners are permitted to enter into minerals agreements that will allow the Indian mineral owners to have more responsibility in overseeing and greater flexibility in disposing of their mineral resources, and to allow development in the manner which the Indian mineral owners believe will maximize their best economic interest and minimize any adverse environmental or cultural impact resulting from such development. Pursuant to section 4 of the IMDA (25 U.S.C. 2103(e)), as part of this greater flexibility, where the Secretary has approved a minerals agreement in compliance with the provisions of 25 U.S.C. chap. 23 and any other applicable provision of law, the United States shall not be liable for losses sustained by a tribe or individual Indian under such minerals agreement. However, as further stated in the IMDA, the Secretary continues to have a trust obligation to ensure that the rights of a tribe or individual Indian are protected in the event of a violation of the terms of any minerals agreement, and to uphold the duties of the United States as derived from the trust relationship and from any treaties, executive orders, or agreements between the United States and any Indian tribe.

(b) The regulations in this part shall become effective and in full force on April 29, 1994, and shall be subject to amendment at any time by the Secretary; *Provided*, that no such regulation that becomes effective after the date of approval of any minerals agreement shall operate to affect the duration of the minerals agreement, the rate of royalty or financial consideration, rental, or acreage unless agreed to by all parties to the minerals agreement.

(c) The regulations of the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, and the Minerals Management Service that are referenced in §§ 225.4, 225.5, and 225.6 are supplemental to these regulations, and apply to minerals agreements for development of Indian mineral resources unless specifically stated otherwise in this part or in other Federal regulations. To the extent the parties to a minerals agreement are able to provide reasonable provisions satisfactorily addressing the issues of valuation, method of payment, accounting, and auditing, governed by the Minerals Management Service regulations, the Secretary may approve alternate provisions in a minerals agreement.

(d) Nothing in these regulations is intended to prevent Indian tribes from exercising their lawful governmental authority to regulate the conduct of persons, businesses, or minerals operations within their territorial jurisdiction.

§ 225.2 Information collection.

It has been determined by the Office of Management and Budget that the Information Collection Requirements contained in part 225 do not require review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

§ 225.3 Definitions.

As used in this part, the following terms have the specified meaning except where otherwise indicated.

Area Director means the Bureau of Indian Affairs Official in charge of an Area Office.

Assistant Secretary—Indian Affairs means the Assistant Secretary—Indian Affairs of the Department of the Interior, a designee of the Secretary of the Interior who may be specifically authorized by the Secretary to disapprove minerals agreements (25 U.S.C. 2103(d)) and to issue orders of cessation and/or minerals agreement cancellations as final orders of the Department.

Authorized Officer means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described herein and in 43 CFR parts 3160, 3180, 3260, 3280, 3480 and 3590.

Director's Representative means the Office of Surface Mining Reclamation and Enforcement Director's Representative authorized by law or by lawful delegation of authority to perform the duties described in 30 CFR part 750 and 25 CFR part 216.

Gas means any fluid, either combustible or noncombustible, that is produced in a natural state from the earth and that maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

Geothermal resources means: (1) All products of geothermal processes, including indigenous steam, hot water, and hot brines;

(2) Steam and other gases, hot water, and hot brines, resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any by-product derived therefrom.

In the best interest of the Indian mineral owner refers to the standards to be applied by the Secretary in considering whether to take administrative action affecting the interests of an Indian mineral owner. In considering whether it is ''in the best interest of the Indian mineral owner'' to take a certain action (such as approval of a minerals agreement or a unitization or communitization agreement) the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease or minerals agreement expiration; probable financial effects on the Indian mineral owner; need for change in the terms of the existing minerals agreement; marketability of mineral products; and potential environmental, social and cultural effects.

Indian lands means any lands or interests in lands owned by any individual Indian or Alaska Native, Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group, the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

Indian mineral owner means any individual Indian or Alaska Native, or Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group that owns a mineral interest in oil and gas, geothermal resources or solid minerals, title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

Indian surface owner means any individual Indian or Alaska Native, or Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group that owns the surface estate in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

Indian tribe means any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group that owns land or interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

Individual Indian means any individual Indian or Alaska Native who owns land or interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

Minerals includes both metalliferous and non-metalliferous minerals; all hydrocarbons, including oil and gas, coal and lignite of all ranks; geothermal resources; and includes but is not limited to sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any other energy or non-energy mineral.

Minerals agreement means any joint venture, operating, production sharing, service, managerial, lease (other than a lease entered into pursuant to the Act of May 11, 1938, or the Act of March 3, 1909), contract, or other minerals agreement; or any amendment, supplement or other modification of such minerals agreement, providing for the exploration for, or extraction, processing, or other development of minerals in which an Indian mineral owner owns a beneficial or restricted interest, or providing for the sale or other disposition of the production or products of such minerals.

Minerals Management Service official means any employee of the Minerals Management Service authorized by law or by lawful delegation of authority to

perform the duties described in 30 CFR chapter II, subchapters A and C.

Mining means the science, technique, and business of mineral development, including, but not limited to: opencast work, underground work, in-situ leaching, or other methods directed to severance and treatment of minerals; however, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered ''mining'' only if the extraction of such a mineral exceeds 5,000 cubic yards in any given year.

Oil means all non-gaseous hydrocarbon substances other than coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process.

Operator means a person, proprietorship, partnership, corporation, or other business entity that has entered into an approved minerals agreement under the authority of the Indian Mineral Development Act of 1982, or who has been assigned an obligation to make royalty or other payments required by the minerals agreement.

Secretary means the Secretary of the Interior or an authorized representative, except that as used in § 225.22 (e) and (f) the authorized representative may only be the Assistant Secretary for Indian Affairs (25 U.S.C. 2103(d)).

Solid minerals means all minerals excluding oil, gas, and geothermal resources.

Superintendent means the Bureau of Indian Affairs official in charge of an agency office.

§ 225.4 Authority and responsibility of the Bureau of Land Management (BLM).

The functions of the Bureau of Land Management are found in 43 CFR Part 3160—Onshore Oil and Gas Operations, 43 CFR Part 3180—Onshore Oil and Gas Unit Agreements: Unproven Areas, 43 CFR Part 3260—Geothermal Resources Operations, 43 CFR Part 3280—Geothermal Resources Unit Agreements: Unproven Areas, 43 CFR Part 3480—Coal Exploration and Mining Operations, and 43 CFR Part 3590—Solid Minerals (Other Than Coal) Exploration and Mining Operations. These functions include, but are not limited to, resource evaluation, approval of drilling permits, approval of mining, reclamation, and production plans, mineral appraisals, inspection and enforcement, and production verification. These regulations, as amended, apply to minerals agreements approved under this part.

§ 225.5 Authority and responsibility of the Office of Surface Mining Reclamation and Enforcement (OSMRE).

The OSMRE is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*). The relevant regulations for surface mining and reclamation operations are found in 30 CFR part 750 and 25 CFR part 216. These regulations, as amended, apply to minerals agreements approved under this part.

§ 225.6 Authority and responsibility of the Minerals Management Service (MMS).

The functions of the MMS for reporting, accounting, and auditing are found in 30 CFR chapter II, subchapters A and C. These regulations, unless specifically stated otherwise in this part or in other regulations, apply to all minerals agreements approved under this part. To the extent the parties to a minerals agreement are able to provide reasonable provisions satisfactorily addressing the issues or functions governed by the MMS regulations relating to valuation of mineral product, method of payment, accounting procedures, and auditing procedures, the Secretary may approve alternate provisions in a minerals agreement.

Subpart B—Minerals Agreements

§ 225.20 Authority to contract.

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into

a minerals agreement with respect to mineral resources in which the tribe owns a beneficial or restricted interest.

(b) Any individual Indian owning a beneficial or restricted interest in mineral resources may include those resources in a tribal minerals agreement subject to the concurrence of the parties and a finding by the Secretary that inclusion of the resources is in the best interest of the individual Indian mineral owner.

§ 225.21 Negotiation procedures.

(a) An Indian mineral owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance, and information during the negotiation process. The Secretary shall provide advice, assistance, and information to the extent allowed by available resources.

(b) No particular form of minerals agreement is prescribed. In preparing the minerals agreement the Indian mineral owner shall, if applicable, address provisions including, but not limited to, the following:

(1) A general statement identifying the parties to the minerals agreement, the legal description of the lands, including, if applicable, rock intervals or thicknesses subject to the minerals agreement, and the purposes of the minerals agreement;

(2) A statement setting forth the duration of the minerals agreement;

(3) A statement providing indemnification to the Indian mineral owner(s) and the United States from all claims, liabilities and causes of action that may be made by persons not a party to the minerals agreement;

(4) Provisions setting forth the obligations of the contracting parties;

(5) Provisions describing the methods of disposition of production;

(6) Provisions outlining the method of payment and amount of compensation to be paid;

(7) Provisions establishing accounting and mineral valuation procedures;

(8) Provisions establishing operating and management procedures;

(9) Provisions establishing any limitations on assignment of interests, including any right of first refusal by the Indian mineral owner in the event of a proposed assignment;

(10) Bond requirements;

(11) Insurance requirements;

(12) Provisions establishing audit procedures;

(13) Provisions for resolving disputes;

(14) A force majeure provision;

(15) Provisions describing the rights of the parties to terminate or suspend the minerals agreement, and the procedures to be followed in the event of termination or suspension;

(16) Provisions describing the nature and schedule of the activities to be conducted by the parties;

(17) Provisions describing the proposed manner and time of performance of future abandonment, reclamation and restoration activities;

(18) Provisions for reporting production and sales;

(19) Provisions for unitizing or communitizing of lands included in a minerals agreement for the purpose of promoting conservation and efficient utilization of natural resources;

(20) Provisions for protection of the minerals agreement lands from drainage and/or unauthorized taking of mineral resources; and

(21) Provisions for record keeping.

(c) In order to avoid delays in obtaining approval, the Indian mineral owner is encouraged to confer with the Secretary prior to formally executing the minerals agreement, and seek advice as to whether the minerals agreement appears to satisfy the requirements of § 225.22, or whether additions or corrections may be required in order to obtain Secretarial approval.

(d) The executed minerals agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into the minerals agreement, shall be forwarded by the tribal representative to the appropriate Superintendent, or in the absence of a Superintendent to the Area Director, for approval.

§ 225.22 Approval of minerals agreements.

(a) A minerals agreement submitted for approval pursuant to § 225.21(d) shall be approved or disapproved within:

(1) One hundred and eighty (180) days after submission, or

(2) Sixty (60) days after compliance, if required, with section 102(2)(C) of the

National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) or any other requirement of Federal law, whichever is later.

(b) At least thirty (30) days prior to approval or disapproval of any minerals agreement, the affected Indian mineral owners shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove the minerals agreement.

(1) The written findings shall include an environmental study which meets the requirements of § 225.24 and an economic assessment, as described in § 225.23.

(2) The Secretary shall include in the written findings any recommendations for changes to the minerals agreement needed to qualify it for approval.

(3) The 30-day period shall commence to run as of the date the written findings are received by the Indian mineral owner.

(4) Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental study required by § 225.24) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement; the financial return to the Indian parties thereto; the extent, nature, value or disposition of the mineral resources; or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged and proprietary information of the affected Indian mineral owners. The letter containing the written findings should be headed with: PRIVILEGED PROPRIETARY INFORMATION OF THE (names of Indian mineral owners).

(c) A minerals agreement shall be approved if, at the Secretary's discretion, it is determined that the following conditions are met:

(1) The minerals agreement is in the best interest of the Indian mineral owner;

(2) The minerals agreement does not have adverse cultural, social, or environmental impacts sufficient to outweigh its expected benefits to the Indian mineral owners; and,

(3) The minerals agreement complies with the requirements of this part and all other applicable regulations and the provisions of applicable Federal law.

(d) The determinations required by paragraph (c) of this section shall be based on the written findings required by paragraph (b) and paragraphs (b)(1) through (b)(4), inclusive, of this section. The question of ''best interest'' within the meaning of paragraph (c)(1) of this section shall be determined by the Secretary based on information obtained from the parties, and any other information considered relevant by the Secretary, including, but not limited to, a review of comparable contemporary contractual arrangements or offers for the development of similar mineral resources received by Indian mineral owners, by non-Indian mineral owners, or by the Federal Government, insofar as that information is readily available.

(e) If a Superintendent or Area Director believes that a minerals agreement should not be approved, a written statement of the reasons why the minerals agreement should not be approved shall be prepared and forwarded, together with the minerals agreement, the written findings required by paragraph (b) and subparagraphs (b)(1) through (b)(4), inclusive, of this section, and all other pertinent documents, to the Secretary for a decision with a copy to the affected Indian mineral owner.

(f) The Secretary shall review any minerals agreement referred with a recommendation that it be disapproved, and the Secretary's decision to disapprove a minerals agreement shall be deemed a final Federal agency action (25 U.S.C. 2103(d)).

§ 225.23 Economic assessments.

The Secretary shall prepare or cause to be prepared an economic assessment that shall address, among other things:

(a) Whether there are assurances in the minerals agreement that operations shall be conducted with appropriate diligence;

(b) Whether the production royalties or other form of return on mineral resources is adequate; and

(c) Whether the minerals agreement is likely to provide the Indian mineral owner with a return on the production comparable to what the owner might

otherwise obtain through competitive bidding, when such a comparison can reasonably be made.

§ 225.24 Environmental studies.

(a) The Secretary shall ensure that all environmental studies are prepared as required by the National Environmental Policy Act of 1969 (NEPA) and the regulations promulgated by the Council on Environmental Quality (CEQ) found at 40 CFR parts 1500–1508.

(b) The Secretary shall ensure that all necessary surveys are performed and clearances obtained in accordance with 36 CFR parts 60, 63, and 800 and with the requirements of the Archaeological and Historic Preservation Act (16 U.S.C. 469 *et seq.*), the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), the American Indian Religious Freedom Act (42 U.S.C. 1996), and Executive Order 11593 (3 CFR 1971–1975 Comp., p. 559, May 13, 1971). If these surveys indicate that a mineral development will have an adverse effect on a property listed on or eligible for listing on the National Register of Historic Places, the Secretary shall:

(1) Seek the comments of the Advisory Council on Historic Preservation, in accordance with 36 CFR part 800;

(2) Ensure that the property is avoided, that the adverse effect is mitigated, or that appropriate excavations or other related research is conducted; and

(3) Ensure that complete data describing the historic property is preserved.

§ 225.25 Resolution of disputes.

A minerals agreement shall contain provisions for resolving disputes that may arise between the parties. However, no such provision shall limit the Secretary's authority or ability to ensure that the rights of an Indian mineral owner are protected in the event of a violation of the provisions of the minerals agreement by any other party to the minerals agreement.

§ 225.26 Auditing and accounting.

The Secretary may conduct audits relating to the scope, nature and extent of compliance with the minerals agreement and with applicable regulations and orders to lessees, operators, revenue payors, and other persons with rental, royalty, net profit share and other payment requirements arising from the provisions of a minerals agreement. Procedures and standards used for accounting and auditing of minerals agreements will be in accordance with audit standards established by the Comptroller General of the United States, in ''Standards for Auditing of Governmental Organizations, Programs, Activities, and Functions, 1981,'' and standards established by the American Institute of Certified Public Accountants.

§ 225.27 Forms and reports.

Any forms required to be filed pursuant to a minerals agreement may be obtained from the Superintendent or Area Director. Prescribed forms for filing geothermal production reports required by the BLM (43 CFR part 3260, §§ 3264.1, 3264.2–4 and 3264.2–5) may be obtained from the Superintendent, Area Director, or the Authorized Officer. Applicable reports required by the MMS shall be filed using the forms prescribed in 30 CFR part 210, which are available from MMS. Guidance on how to prepare and submit required information, collection reports, and forms to MMS is available from: Minerals Management Service, Attention: Lessee (or Reporter) Contact Branch, P.O. Box 5760, Denver, Colorado 80217. Additional reporting requirements may be required by the Secretary.

§ 225.28 Approval of amendments to minerals agreements.

An amendment, modification or supplement to a minerals agreement entered into pursuant to the regulations in this part, whether the minerals agreement was approved before or after the effective date of these regulations, must be approved in writing by all parties before being submitted to the Secretary for approval. The provisions of § 225.22 apply to approvals of amendments, modifications, or supplements to minerals agreements entered into under the regulations in this part. However, amendments, modifications, or supplements that do not substantially alter or affect the factors listed

in § 225.22(c), may be approved by referencing materials previously submitted for the initial review and approval of the minerals agreement. The Secretary may approve an amendment, modification, or supplement if it is determined that the underlying minerals agreement, as amended, modified, or supplemented meets the criteria for approval set forth in § 225.22(c).

§ 225.29 Corporate qualifications and requests for information.

(a) The signing in a representative capacity of minerals agreements or assignments, bonds, or other instruments required by a minerals agreement or these regulations, constitutes certification that the individual signing (except a surety agent) is authorized to act in such a capacity. An agent for a surety shall furnish a power of attorney.

(b) A prospective corporate operator proposing to acquire an interest in a minerals agreement shall have on file with the Superintendent a statement showing:

(1) The State(s) in which the corporation is incorporated, and a notarized statement that the corporation is authorized to hold such interests in the State where the land described in the minerals agreement is situated; and

(2) A notarized statement that it has power to conduct all business and operations as described in the minerals agreement.

(c) The Secretary may, either before or after the approval of a minerals agreement, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, or other applicable laws and regulations.

§ 225.30 Bonds.

(a) Bonds required by provisions of a minerals agreement should be in an amount sufficient to ensure compliance with all of the requirements of the minerals agreement and the statutes and regulations applicable to the minerals agreement. Surety bonds shall be issued by a qualified company approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(b) An operator may file a $75,000 bond for all geothermal, mining, or oil and gas minerals agreements in any one State, which may also include areas on that part of an Indian reservation extending into any contiguous State. Statewide bonds shall be filed for approval with the Secretary.

(c) An operator may file a $150,000 bond for full nationwide coverage to cover all geothermal or oil and gas minerals agreements without geographic or acreage limitation to which the operator is or may become a party. Nationwide bonds shall be filed for approval with the Secretary.

(d) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the provisions and conditions of the minerals agreement. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the provisions and conditions of a minerals agreement; or

(5) Letter of credit issued by a financial institution authorized to do business in the United States and whose deposits are Federally insured, and identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the provisions and conditions of a minerals agreement.

(i) The letter of credit shall be irrevocable during its term.

(ii) The letter of credit shall be payable to the Bureau of Indian Affairs on demand, in part or in full, upon receipt from the Secretary of a notice of attachment stating the basis thereof (e.g., default in compliance with the minerals agreement provisions and

conditions or failure to file a replacement in accordance with subparagraph (d)(5)(v) of this section).

(iii) The initial expiration date of the letter of credit shall be at least one (1) year following the date it is filed in the proper Bureau of Indian Affairs office.

(iv) The letter of credit shall contain a provision for automatic renewal for periods of not less than one (1) year in the absence of notice to the proper Bureau of Indian Affairs office at least ninety (90) days prior to the originally stated or any extended expiration date.

(v) A letter of credit used as security for any minerals agreement upon which operations have taken place and final approval for abandonment has not been given, or as security for a statewide or nationwide bond, shall be forfeited and shall be collected by the Secretary if not replaced by other suitable bond or letter of credit at least thirty (30) days before its expiration date.

(e) The required amount of a bond may be increased in any particular case at the discretion of the Secretary.

[59 FR 14971, Mar. 30, 1994; 60 FR 10474, Feb. 24, 1995]

§ 225.31 Manner of payments.

Unless specified otherwise in the minerals agreement, after production has been established, all payments due for royalties, bonuses, rentals and other payments under a minerals agreement shall be made to the Secretary or such other party as may be designated, and shall be made at such time as provided in 30 CFR chapter II, subchapters A and C. Prior to production, all bonus and rental payments, shall be made to the Superintendent or Area Director.

§ 225.32 Permission to start operations.

(a) No exploration, drilling, or mining operations are permitted on any Indian lands before the Secretary has granted written approval of the minerals agreement pursuant to the regulations. After a minerals agreement is approved, written permission to start operations must be secured by applying for the permits referred to in paragraph (b) of this section.

(b) Applicable permits in accordance with rules and regulations in 30 CFR part 750, 43 CFR parts 3160, 3260, 3480, 3590, and Orders or Notices to Lessees (NTL) issued thereunder shall be required before actual operations are conducted on the minerals agreement acreage.

§ 225.33 Assignment of minerals agreements.

An assignment of a minerals agreement, or any interest therein, shall not be valid without the approval of the Secretary and, if required in the minerals agreement, the Indian mineral owner. The assignee must be qualified to hold the minerals agreement and shall furnish a satisfactory bond conditioned on the faithful performance of the covenants and conditions thereof as stipulated in the minerals agreement. A fully executed copy of the assignment shall be filed with the Secretary within five (5) working days after execution by all parties. The Secretary may permit the release of any bonds executed by the assignor upon submission of satisfactory bonds to the Bureau of Indian Affairs by the assignee, and a determination that the assignor has satisfied all accrued obligations.

§ 225.34 [Reserved]

§ 225.35 Inspection of premises; books and accounts.

(a) Operators shall allow Indian mineral owners, their authorized representatives, or any authorized representatives of the Secretary to enter all parts of the minerals agreement area for the purpose of inspection. Operators shall keep a full and correct account of all operations and submit all related reports required by the minerals agreement and applicable regulations. Books and records shall be available for inspection during regular business hours.

(b) Operators shall provide records to the Minerals Management Service (MMS) in accordance with MMS regulations and guidelines. All records pertaining to a minerals agreement shall be maintained by an operator in accordance with 30 CFR part 212.

(c) Operators shall provide records to the Authorized Officer in accordance with BLM regulations and guidelines.

(d) Operators shall provide records to the Director's Representative in accordance with OSMRE regulations and guidelines.

§ 225.36 Minerals agreement cancellation; Bureau of Indian Affairs notice of noncompliance.

(a) If the Secretary determines that an operator has failed to comply with the regulations in this part; other applicable laws or regulations; the terms of the minerals agreement; the requirements of an approved exploration, drilling or mining plan; Secretarial orders; or the orders of the Authorized Officer, the Director's Representative, or the MMS Official, the Secretary may:

(1) Serve a notice of noncompliance; or

(2) Serve a notice of proposed cancellation.

(b) The notice of noncompliance shall specify in what respect the operator has failed to comply with the requirements referenced in paragraph (a), and shall specify what actions, if any, must be taken to correct the noncompliance.

(c) The notice of proposed cancellation shall set forth the reasons why cancellation is proposed.

(d) The notice of proposed cancellation or noncompliance shall be served upon the operator by delivery in person or by certified mail to the operator at the operator's last known address. When certified mail is used, the date of service shall be deemed to be when received or five (5) working days after the date it is mailed, whichever is earlier.

(e) The operator shall have thirty (30) days (or such longer time as specified in the notice) from the date that the Bureau of Indian Affairs notice of proposed cancellation or noncompliance is served to respond, in writing, to the Superintendent or Area Director actually issuing the notice.

(f) If an operator fails to take any action that may be prescribed in the notice of proposed cancellation, fails to file a timely written response to the notice, or files a written response that does not, in the discretion of the Secretary, adequately justify the operator's failure to comply, then the Secretary may cancel the minerals agreement, specifying the basis for the cancellation. Cancellation of a minerals agreement shall not relieve the operator of any continuing obligation under the minerals agreement.

(g) If an operator fails to take corrective action or to file a timely written response adequately justifying the operator's actions pursuant to a notice of noncompliance, the Secretary may issue an order of cessation. If the operator fails to comply with the order of cessation, or fails to timely file an appeal of the order of cessation pursuant to paragraph (k) of this section, the Secretary may issue an order of minerals agreement cancellation.

(h) This section does not limit any other remedies of the Indian mineral owner as set forth in the minerals agreement.

(i) Nothing in this section is intended to limit the authority of the Authorized Officer, the Director's Representative, or the MMS Official to take any enforcement action authorized pursuant to statute or regulation.

(j) The Authorized Officer, the Director's Representative, the MMS Official, and the Superintendent or Area Director should consult with one another before taking any enforcement actions.

(k) If orders of cessation or minerals agreement cancellation issued pursuant to this section are issued by a designee of the Secretary other than the Assistant Secretary for Indian Affairs, the orders may be appealed under 25 CFR part 2. If the orders are issued by the Secretary or the Assistant Secretary for Indian Affairs, and not one of their delegates or subordinates, the orders are the final orders of the Department.

§ 225.37 Penalties.

(a) In addition to or in lieu of cancellation under § 225.36, violations of the terms and conditions of any minerals agreement, the regulations in this part, other applicable laws or regulations, or failure to comply with a notice of noncompliance or a cessation order issued by the Secretary may subject an operator to a penalty of not more than $1,000 per day for each day

that such a violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of a proposed penalty shall be served on the operator either personally or by certified mail to the operator at the operator's last known address. The date of service by certified mail shall be deemed to be the date received or five (5) working days after the date mailed, whichever is earlier.

(c) The notice shall specify the nature of the violation and the proposed penalty, and shall specifically advise the operator of the operator's right to either request a hearing within thirty (30) days of receipt of the notice or pay the proposed penalty. Hearings shall be held before the Superintendent or Area Director whose findings shall be conclusive, unless an appeal is taken pursuant to 25 CFR part 2. If within thirty (30) days of receipt of the notice of proposed penalty the operator has not requested a hearing or paid the amount of the proposed penalty, a final notice of penalty shall be served.

(d) If the person served with a notice of proposed penalty requests a hearing, penalties shall accrue each day the violations or noncompliance set forth in the notice continue beyond the time limits presented for corrective action. The Secretary may issue a written suspension of the requirement to correct the violations pending completion of the hearings provided by this section only upon a determination, at the discretion of the Secretary, that such a suspension will not be detrimental to the Indian mineral owner and upon submission and acceptance of a bond deemed adequate to indemnify the Indian mineral owner from loss or damage. The amount of the bond must be sufficient to cover the cost of correcting the violations set forth in the notice or any disputed amounts plus accrued penalties and interest.

(e) Payment of penalties in full more than ten (10) days after a final decision imposing a penalty shall subject the operator to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the Secretary. In the absence of a specific minerals agreement provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under section 6621(a)(2) of the Internal Revenue Code of 1954. Interest shall be charged only on the amount of payment not received and only for the number of days the payment is late.

(f) None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the Authorized Officer, the Director's Representative, or the MMS Official to impose penalties under applicable statutory or regulatory authorities;

(2) Replacing, superseding, or replicating any penalty provision in the terms and conditions of a minerals agreement approved by the Secretary pursuant to this part; or

(3) Authorizing the imposition of a penalty for violations of minerals agreement provisions for which the Authorized Officer, Director's Representative, or MMS Official has either statutory or regulatory authority to assess a penalty.

§ 225.38 Appeals.

Appeals from decisions of Officials of the Bureau of Indian Affairs under this part may be taken pursuant to 25 CFR part 2.

§ 225.39 Fees.

(a) Unless otherwise authorized by the Secretary, each minerals agreement or assignment thereof, shall be accompanied by a filing fee of $75.00 at the time of filing.

(b) An Indian mineral owner shall not be required to pay a filing fee if the Indian mineral owner, pursuant to a provision in the existing minerals agreement, acquires an additional interest in that minerals agreement.

§ 225.40 Government employees cannot acquire minerals agreements.

U.S. Government employees are prevented from acquiring any interest(s) in minerals agreements by the provisions of 25 CFR part 140 and 43 CFR part 20 pertaining to conflicts of interest and ownership of an interest in trust land.

PART 226—LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

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AUTHORITY: Sec. 3, 34 Stat. 543; secs. 1, 2, 45 Stat. 1478; sec. 3, 52 Stat. 1034, 1035; sec. 2(a), 92 Stat. 1660.

SOURCE: 39 FR 22254, June 21, 1974, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§226.1 Definitions.

As used in this part 226, terms shall have the meanings set forth in this section.

(a) *Secretary* means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) *Osage Tribal Council* means the duly elected governing body of the Osage Nation or Tribe of Indians of Oklahoma vested with authority to lease or take other actions on oil and gas mining pertaining to the Osage Mineral Estate.

(c) *Superintendent* means the Superintendent of the Osage Agency, Pawhuska, Oklahoma, or his authorized representative acting under delegated authority.

(d) *Oil lessee* means any person, firm, or corporation to whom an oil mining lease is made under the regulations in this part.

(e) *Gas lessee* means any person, firm, or corporation to whom a gas mining lease is made under the regulations in this part.

(f) *Oil and gas lessee* means any person, firm, or corporation to whom an oil and gas mining lease is made under the regulations in this part.

(g) *Primary term* means the basic period of time for which a lease is issued during which the lease contract may be kept in force by payment of rentals.

(h) *Major purchaser* means any one of the minimum number of purchasers taking 95 percent of the oil in Osage County, Oklahoma. Any oil purchased by a purchaser from itself, its subsidiaries, partnerships, associations, or other corporations in which it has a financial or management interest shall be excluded from the determination of a major purchaser.

(i) *Casinghead gas* means gas produced from an oil well as a consequence of oil production from the same formation.

(j) *Natural gas* means any fluid, either combustible or noncombustible, recovered at the surface in the gaseous phase and/or hydrocarbons recovered at the surface as liquids which are the result of condensation caused by reduction of pressure and temperature of hydrocarbons originally existing in a reservoir in the gaseous phase.

(k) *Authorized representative* of an oil lessee, gas lessee, or oil and gas lessee means any person, group, or groups of persons, partnership, association, company, corporation, organization or agent employed by or contracted with a lessee or any subcontractor to conduct oil and gas operations or provide facilities to market oil and gas.

(l) *Oil well* means any well which produces one (1) barrel or more of crude petroleum oil for each 15,000 standard cubic feet of natural gas.

(m) *Gas well* means any well which:

(1) Produces natural gas not associated with crude petroleum oil at the time of production or

(2) Produces more than 15,000 standard cubic feet of natural gas to each barrel of crude petroleum oil from the same producing formation.

[39 FR 22254, June 21, 1974, as amended at 41 FR 50648, Nov. 17, 1976; 43 FR 8135, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990]

LEASING PROCEDURE, RENTAL AND ROYALTY

§ 226.2 Sale of leases.

(a) Written application, together with any nomination fee, for tracts to be offered for lease shall be filed with the Superintendent.

(b) The Superintendent, with the consent of the Osage Tribal Council, shall publish notices for the sale of oil leases, gas leases, and oil and gas leases to the highest responsible bidder on specific tracts of the unleased Osage Mineral Estate. The Superintendent may require any bidder to submit satisfactory evidence of his good faith and ability to comply with all provisions of the notice of sale. Successful bidders must deposit with the Superintendent on day of sale a check or cash in an amount not less than 25 percent of the cash bonus offered as a guaranty of good faith. Any and all bids shall be subject to the acceptance of the Osage Tribal Council and approval of the Superintendent. Within 20 days after notification of being the successful bidder, and said bidder must submit to the Superintendent the balance of the cash bonus, a $10 filing fee, and the lease in completed form. The Superintendent may extend the time for the completion and submission of the lease form, but no extension shall be granted for remitting the balance of moneys due. If the bidder fails to pay the full cash consideration within said period or fails to file the completed lease within said period or extention thereof, or if the lease is rejected through no fault of the Osage Tribal Council or the Superintendent, 25 percent of the cash bonus bid will be forfeited for the use and benefits of the Osage Tribe. The Superintendent may reject a lease made on an accepted bid, upon evidence satisfactory to him of collusion, fraud, or other irregularity in connection with the notice of sale. The Superintendent may approve oil leases, gas leases, and oil and gas leases made by the Osage Tribal Council in conformity with the notice of sale, regulations in this part, bonds, and other instruments required.

(c) Each oil and/or gas lease and activities and installations associated therewith subject to these regulations shall be assessed and evaluated for its environmental impact prior to its approval by the Superintendent.

(d) Lessee shall accept a lease with the understanding that a mineral not covered by his lease may be leased separately.

(e) No lease, assignment thereof, or interest therein will be approved to any employee or employees of the Government and no such employee shall be

permitted to acquire any interest in leases covering the Osage Mineral Estate by ownership of stock in corporations having leases or in any other manner.

(f) The Osage Tribal Council may utilize the following procedures among others, in entering into a mining lease. A contract may be entered into through competitive bidding as outlined in § 226.2(b), negotiation, or a combination of both. The Osage Tribal Council may also request the Superintendent to undertake the preparation, advertisement and negotiation. The Superintendent may approve any such contract made by the Osage Tribal Council.

[39 FR 22254, June 21, 1974, as amended at 43 FR 8135, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 226.3 Surrender of lease.

Lessee may, with the approval of the Superintendent and payment of a $10 filing fee, surrender all or any portion of any lease, have the lease cancelled as to the portion surrendered and be relieved from all subsequent obligations and liabilities. If the lease, or portion being surrendered, is owned in undivided interests by more than one party, then all parties shall join in the application for cancellation: *Provided*, That if this lease has been recorded, Lessee shall execute a release and record the same in the proper office. Such surrender shall not entitle Lessee to a refund of the unused portion of rental paid in lieu of development, nor shall it relieve Lessee and his sureties of any obligation and liability incurred prior to such surrender: *Provided further*, That when there is a partial surrender of any lease and the acreage to be retained is less than 160 acres or there is a surrender of a separate horizon, such surrender shall become effective only with the consent of the Osage Tribal Council and approval of the Superintendent.

[43 FR 8135, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 226.4 Form of payment.

Sums due under a lease contract and/or the regulations in this part shall be paid by cash or check made payable to the Bureau of Indian Affairs and delivered to the Osage Agency, Pawhuska, Oklahoma 74056. Such sums shall be a prior lien on all equipment and unsold oil on the leased premises.

§ 226.5 Leases subject to current regulations.

Leases issued pursuant to this part shall be subject to the current regulations of the Secretary, all of which are made a part of such leases: *Provided*, That no amendment or change of such regulations made after the approval of any lease shall operate to affect the term of the lease, rate of royalty, rental, or acreage unless agreed to by both parties and approved by the Superintendent.

§ 226.6 Bonds.

Lessees shall furnish with each lease a corporate surety bond acceptable to the Superintendent as follows:

(a) A bond on Form D shall be filed with each lease submitted for approval. Such bond shall be in an amount of not less than $5,000 for each quarter section or fractional quarter section covered by said lease: *Provided, however*, That one bond in the penal sum or not less than $50,000 may be filed on Form G covering all oil, gas and combination oil and gas leases not in excess of 10,240 acres to which Lessee is or may become a party.

(b) In lieu of the bonds required under paragraph (a) of this section, a bond in the penal sum of $150,000 may be filed on Form 5–5438 for full nationwide coverage of all leases, without geographic or acreage limitation, to which the Lessee is or may become a party.

(c) A bond on Form H shall be filed in an amount of not less than $5,000 covering a lease acquired through assignment where the assignee does not have a collective bond on form G or nationwide bond, or the corporate surety does not execute its consent to remain bound under the original bond given to secure the faithful performance of the terms and conditions of the lease.

(d) The right is specifically reserved to increase the amount of bonds prescribed in paragraphs (a) and (c) of this section in any particular case when the Superintendent deems it proper. The

nationwide bond may be increased at any time in the discretion of the Secretary.

[39 FR 22254, June 21, 1974, as amended at 43 FR 8135, Feb. 28, 1978; 43 FR 11815, Mar. 22, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990]

§ 226.7 Provisions of forms made a part of the regulations.

Leases, assignments, and supporting instruments shall be in the form prescribed by the Secretary, and such forms are hereby made a part of the regulations.

§ 226.8 Corporation and corporate information.

(a) If the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute papers; and with its first application it shall also file a certified copy of its Articles of Incorporation and, if foreign to the State of Oklahoma, evidence showing compliance with the corporation laws thereof.

(b) Whenever deemed advisable the Superintendent may require a corporation to file any additional information necessary to carry out the purpose and intent of the regulations in this part, and such information shall be furnished within a reasonable time.

§ 226.9 Rental and drilling obligations.

(a) Oil leases, gas leases, and combination oil and gas leases. Unless Lessee shall complete and place on production a well producing and selling oil and/or gas in paying quantities on the land embraced within the lease within 12 months from the date of approval of the lease, or as otherwise provided in the lease terms, or 12 months from the date the Superintendent consents to drilling on any restricted homestead selection, the lease shall terminate unless rental at the rate of not less than $1 per acre for an oil or gas lease, or not less than $2.00 per acre for a combination oil and gas lease, shall be paid before the end of the first year of the lease. The lease may also be held for the remainder of its primary term without drilling upon payment of the specified rental annually in advance, commencing with the second lease year. The lease shall terminate as of the due date of the rental unless such rental shall be received by the Superintendent, or shall have been mailed as indicated by postmark on or before said date. The completion of a well producing in paying quantities shall, for so long as such production continues, relieve Lessee from any further payment of rental, except that should such production cease during the primary term the lease may be continued only during the remaining primary term of the lease by payment of advance rental which shall commence on the next anniversary date of the lease. Rental shall be paid on the basis of a full year and no refund will be made of advance rental paid in compliance with the regulations in this part: *Provided,* That the Superintendent in his discretion may order further development of any leased acreage or separate horizon if, in his opinion, a prudent operator would conduct further development. If Lessee refuses to comply, the refusal will be considered a violation of the lease terms and said lease shall be subject to cancellation as to the acreage or horizon the further development of which was ordered: *Provided further,* That the Superintendent may impose restrictions as to time of drilling and rate of production from any well or wells when in his judgment, such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Osage Tribe. The superintendent may consider, among other things, Federal and Oklahoma laws regulating either drilling or production. If a lessee holds both an oil lease and a gas lease covering the same acreage, such lessee is subject to the provisions of this section as to both the oil lease and the gas lease.

(b) The Superintendent may, with the consent of and under terms approved by the Osage Tribal Council, grant an extension of the primary term of a lease on which the actual drilling of a well shall have commenced within the term thereof or for the purpose of enabling Lessee to obtain a market for his oil and/or gas production.

[43 FR 8135, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 226.10 Term of lease.

Leases issued hereunder shall be for a primary term as established by the Osage Tribal Council, approved by the Superintendent, and so stated in the notice of sale of such leases and so long thereafter as the minerals specified are produced in paying quantities.

[43 FR 8136, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 226.11 Royalty payments.

(a) *Royalty on oil*—(1) *Royalty rate.* Lessee shall pay or cause to be paid to the Superintendent, as royalty, the sum of not less than 16⅔ percent of the gross proceeds from sales after deducting the oil used by Lessee for development and operation purposes on the lease: *Provided,* That when the quantity of oil taken from all the producing wells on any quarter-section or fraction thereof, according to the public survey, during any calendar month is sufficient to average one hundred or more barrels per active producing well per day the royalty on such oil shall be not less than 20 percent. The Osage Tribal Council may, upon presentation of justifiable economic evidence by Lessee, agree to a revised royalty rate subject to approval by the Superintendent, applicable to additional oil produced from a lease or leases by enhanced recovery methods, which rate shall not be less than 12½ percent of the gross proceeds from sale of oil produced by enhanced recovery processes, other than gas injection, after deducting the oil used by Lessee for development and operating purposes on the lease or leases.

(2) Unless the Osage Tribal Council, with approval of the Secretary, shall elect to take the royalty in kind, payment is owing at the time of sale or removal of the oil, except where payments are made on division orders, and settlement shall be based on the actual selling price, but at not less than the highest posted price by a major purchaser (as defined in § 226.1(h)) in Osage County, Oklahoma, who purchases production from Osage oil leases.

(3) *Royalty in kind.* Should Lessor, with approval of the Secretary, elect to take the royalty in kind, Lessee shall furnish free storage for royalty oil for a period not to exceed 60 days from date of production after notice of such election.

(b) *Royalty on gas*—(1) *Oil lease.* All casinghead gas shall belong to the oil Lessee subject to any rights under existing gas leases. All casinghead gas removed from the lease from which it is produced shall be metered unless otherwise approved by the Superintendent and be subject to a royalty of not less than 16⅔ percent of the market value of the gas and all products extracted therefrom, less a reasonable allowance for manufacture or processing. If an oil Lessee supplies casinghead gas produced from one lease for operation and/or development of other leases, either his/hers or others, a royalty of not less than 16⅔ percent shall be paid on the market value of all casinghead gas so used. All casinghead gas not utilized by the oil Lessee may, with the approval of the Superintendent, be utilized or sold by the gas Lessee, subject to the prescribed royalty of not less than 16⅔ percent of the market value.

(2) *Gas lease.* Lessee shall pay a royalty of not less than 16⅔ percent of the market value value of all natural gas and products extracted therefrom produced and sold from his lease. Natural gas used in the reasonable and prudent operation and development of said lease shall be exempted from royalty payment.

(3) *Combination oil and gas lease.* Lessee shall pay royalty as provided in paragraphs (b)(1) and (2) of this section.

(c) *Minimum royalty.* In no event shall the royalty paid from producing leases during any year be less than an amount equal to the annual rental specified for the lease. Any underpayment of minimum royalty shall be due and payable within 45 days following the end of the lease year. After the primary term, Lessee shall submit with his payment evidence that the lease is producing in paying quantities. The Superintendent is authorized to determine whether the lease is actually producing in paying quantities or has terminated for lack of such production. Payment for any underpayment not made within the time specified shall be subject to a late charge at the rate of not less than 1½

percent per month for each month or fraction thereof until paid.

[39 FR 22254, June 21, 1974, as amended at 43 FR 8136, Feb. 28, 1978; 43 FR 11815, Mar. 22, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990; 59 FR 22104, Apr. 28, 1994]

§ 226.12 Government reserves right to purchase oil.

Any of the executive departments of the U.S. Government shall have the option to purchase all or any part of the oil produced from any lease at not less than the highest posted price as defined in § 226.11.

§ 226.13 Time of royalty payments and reports.

(a) Royalty payments due may be paid by either purchaser or Lessee. Unless otherwise provided by the Osage Tribal Council and approved by the Superintendent, all payments shall be due by the 25th day of each month and shall cover the sales of the preceding month. Failure to make such payments shall subject Lessee or purchaser, whoever is responsible for royalty payment, to a late charge at the rate of not less than 1½ percent for each month or fraction thereof until paid. The Osage Tribal Council, subject to the approval of the Superintendent, may waive the late charges.

(b) Lessee shall furnish certified monthly reports by the 25th of each following month covering all operations, whether there has been production or not, indicating therein the total amount of oil, natural gas, casinghead gas, and other products subject to royalty payment.

(c) Failure to remit payments or reports shall subject Lessee to further penalties as provided in §§ 226.42 and 226.43 and shall subject the division order to cancellation.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990]

§ 226.14 Contracts and division orders.

(a) Lessee may enter into division orders or contracts with the purchasers of oil, gas, or derivatives therefrom which will provide for the purchaser to make payment of royalty in accordance with his lease: *Provided*, That such division orders or contracts shall not relieve Lessee from responsibility for the payment of the royalty should the purchaser fail to pay. No production shall be removed from the leased premises until a division order and/or contract and its terms are approved by the Superintendent: *Provided further*, That the Superintendent may grant temporary permission to run oil or gas from a lease pending the approval of a division order or contract. Lessee shall file a certified monthly report and pay royalty on the value of all oil and gas used off the premises for development and operating purposes. Lessee shall be responsible for the correct measurement and reporting of all oil and/or gas taken from the leased premises.

(b) Lessee shall require the purchaser of oil and/or gas from his/her lease or leases to furnish the Superintendent, no later than the 25th day of each month, a statement reporting the gross barrels of oil and/or gross Mcf of gas sold during the preceding month. The Superintendent may authorize an extension of time, not to exceed 10 days, for furnishing this statement.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33114, Aug. 14, 1990]

§ 226.15 Unit leases, assignments and related instruments.

(a) *Unitization of leases*. The Osage Tribal Council and Lessee or Lessees, may, with the approval of the Superintendent, unitize or merge, two or more oil or oil and gas leases into a unit or cooperative operating plan to promote the greatest ultimate recovery of oil and gas from a common source of supply or portion thereof embracing the lands covered by such lease or leases. The cooperative or unit agreement shall be subject to the regulations in this part and applicable laws governing the leasing of the Osage Mineral Estate. Any agreement between the parties in interest to terminate a unit or cooperative agreement as to all or any portion of the lands included shall be submitted to the Superintendent for his approval. Upon approval the leases included thereunder shall be restored to their original terms: *Provided*, That for the purpose of preventing

waste and to promote the greatest ultimate recovery of oil and gas from a common source of supply or portion thereof, all oil leases, oil and gas leases, and gas leases issued heretofore and hereafter under the provisions of the regulations in this part shall be subject to any unit development plan affecting the leased lands that may be required by the Superintendent with the consent of the Osage Tribal Council, and which plan shall adequately protect the rights of all parties in interest including the Osage Mineral Estate.

(b) *Assignments.* Approved leases or any interest therein may be assigned or transferred only with the approval of the Superintendent. The assignee must be qualified to hold such lease under existing rules and regulations and shall furnish a satisfactory bond conditioned for the faithful performance of the covenants and conditions thereof. Lessee must assign either his entire interest in a lease or legal subdivision thereof, or an undivided interest in the whole lease: *Provided,* That when an assignment covers only a portion of a lease or covers interests in separate horizons such assignment shall be subject to both the consent of the Osage Tribal Council and approval of the Superintendent. If a lease is divided by the assignment of an entire interest in any part, each part shall be considered a separate lease and the assignee shall be bound to comply with all the terms and conditions of the original lease. A fully executed copy of the assignment shall be filed with the Superintendent within 30 days after the date of execution by all parties. If requested within the 30-day period, the Superintendent may grant an extension of 15 days. A filing fee of $10 shall accompany each assignment.

(c) *Overriding royalty.* Agreements creating overriding royalties or payments out of production shall not be considered as an interest in a lease as such term is used in paragraph (b) of this section. Agreements creating overriding royalties or payments out of production are hereby authorized and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto, but such agreements shall be subject to the condition that nothing in any such agreement shall be construed as modifying any of the obligations of Lessee under his lease and the regulations in this part. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. The existence of agreements creating overriding royalties or payments out of production, whether or not acutally paid, shall not be considered in justifying the shutdown or abandonment of any well. Agreements creating overriding royalties or payments out of production need not be filed with the Superintendent unless incorporated in assignments or instruments required to be filed pursuant to paragraph (b) of this section. An agreement creating overriding royalties or payment out of production shall be suspended when the working interest income per active producing well is equal to or less than the operational cost of the well, as determined by the Superintendent.

(d) *Drilling contracts.* The Superintendent is authorized to approve drilling contracts with a stipulation that such approval does not in any way bind the Department to approve subsequent assignments that may be provided for in said contracts. Approval merely authorizes entry on the lease for the purpose of development work.

(e) *Combining leases.* The lessee owning both an oil lease and gas lease covering the same acreage is authorized to convert such leases to a combination oil and gas lease.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

OPERATIONS

§ 226.16 Commencement of operations.

(a) No operations shall be permitted upon any tract of land until a lease covering such tract shall have been approved by the Superintendent: *Provided,* That the Superintendent may grant authority to any party under such rules, consistent with the regulations in this part that he deems proper, to conduct geophysical and geological exploration work.

(b) Lessee shall submit applications on forms to be furnished by the Superintendent and secure his approval before:

(1) Well drilling, treating, or workover operations are started on the leased premises.

(2) Removing casing from any well.

(c) Lessee shall notify the Superintendent a reasonable time in advance of starting work, of intention to drill, redrill, deepen, plug, or abandon a well.

§ 226.17 How to acquire permission to begin operations on a restricted homestead allotment.

(a) Lessee may conduct operations within or upon a restricted homestead selection only with the written consent of the Superintendent.

(b) If the allottee is unwilling to permit operations on his homestead, the Superintendent will cause an examination of the premises to be made with the allottee and lessee or his representative. Upon finding that the interests of the Osage Tribe require that the tract be developed, the Superintendent will endeavor to have the parties agree upon the terms under which operations on the homestead may be conducted.

(c) In the event the allottee and lessee cannot reach an agreement, the matter shall be presented by all parties before the Osage Tribal Council, and the Council shall make its recommendations. Such recommendations shall be considered as final and binding upon the allottee and lessee. A guardian may represent the allottee. Where no one is authorized or where no person is deemed by the Superintendent to be a proper party to speak for a person of unsound mind or feeble understanding, the Principal Chief of the Osage Tribe shall represent him.

(d) If the allottee or his representative does not appear before the Osage Tribal Council when notified by the Superintendent, or if the Council fails to act within 10 days after the matter is referred to it, the Superintendent may authorize lessee to proceed with operations in conformity with the provisions of his lease and the regulations in this part.

§ 226.18 Information to be given surface owners prior to commencement of drilling operations.

Except for the surveying and staking of a well, no operations of any kind shall commence until the lessee or his/her authorized representative shall meet with the surface owner or his/her representative, if a resident of and present in Osage County, Oklahoma. Unless waived by the Superintendent or otherwise agreed to between the lessee and surface owner, such meeting shall be held at least 10 days prior to the commencement or any operations, except for the surveying and staking of the well. At such meeting lessee or his/her authorized representative shall comply with the following requirements:

(a) Indicate the location of the well or wells to be drilled.

(b) Arrange for route of ingress and egress. Upon failure to agree on route ingress and egress, said route shall be set by the Superintendent.

(c) Impart to said surface owners the name and address of the party or representative upon whom the surface owner shall serve any claim for damages which he may sustain from mineral development or operations, and as to the procedure for settlement thereof as provided in § 226.21

(d) Where the drilling is to be on restricted land, lessee or his authorized representative in the manner provided above shall meet with the Superintendent.

(e) When the surface owner or his/her representative is not a resident of, or is not physically present in, Osage County, Oklahoma, or cannot be contacted at the last known address, the Superintendent may authorize lessee to proceed with operations.

[39 FR 22254, June 21, 1974, as amended at 41 FR 50648, Nov. 17, 1976; 43 FR 8136, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

§ 226.19 Use of surface of land.

(a) Lessee or his/her authorized representative shall have the right to use so much of the surface of the land within the Osage Mineral Estate as may be reasonable for operations and marketing. This includes but is not

limited to the right to lay and maintain pipelines, electric lines, pull rods, other appliances necessary for operations and marketing, and the right-of-way for ingress and egress to any point of operations. If Lessee and surface owner are unable to agree as to the routing of pipelines, electric lines, etc., said routing shall be set by the Superintendent. The right to use water for lease operations is established by § 226.24. Lessee shall conduct his/her operations in a workmanlike manner, commit no waste and allow none to be committed upon the land, nor permit any unavoidable nuisance to be maintained on the premises under his/her control.

(b) Before commencing a drilling operation, Lessee shall pay or tender to the surface owner commencement money in the amount of $25 per seismic shot hole and commencement money in the amount of $300 for each well, after which Lessee shall be entitled to immediate possession of the drilling site. Commencement money will not be required for the redrilling of a well which was originally drilled under the currently lease. A drilling site shall be held to the minimum area essential for operations and shall not exceed one and one-half acres in area unless authorized by the Superintendent. Commencement money shall be a credit toward the settlement of the total damages. Acceptance of commencement money by the surface owner does not affect his/her right to compensation for damages as described in § 226.20, occasioned by the drilling and completion of the well for which it was paid. Since actual damage to the surface from operations cannot necessarily be ascertained prior to the completion of a well as a serviceable well or dry hole, a damage settlement covering the drilling operation need not be made until after completion of drilling operations.

(c) Where the surface is restricted land, commencement money shall be paid to the Superintendent for the landowner. All other surface owners shall be paid or tendered such commencement money direct. Where such surface owners are not residents of Osage County nor have a representative located therein, such payment shall be made or tendered to the last known address of the surface owner at least 5 days before commencing drilling operation on any well: *Provided*, That should lessee be unable to reach the owner of the surface of the land for the purpose of tendering the commencement money or if the owner of the surface of the land shall refuse to accept the same, lessee shall deposit such amount with the Superintendent by check payable to the Bureau of Indian Affairs. The superintendent shall thereupon advise the owner of the surface of the land by mail at his last known address that the commencement money is being held for payment to him upon his written request.

(d) Lessee shall also pay fees for tank sites not exceeding 50 feet square at the rate of $100 per tank site or other vessel: *Provided*, That no payment shall be due for a tank temporarily set on a well location site for drilling, completing, or testing. The sum to be paid for a tank occupying more than 50 feet square shall be agreed upon between the surface owner and lessee or, on failure to agree, the same shall be determined by arbitration as provided by § 226.21.

[39 FR 22254, June 22, 1974, as amended at 43 FR 8136, Feb. 28, 1978; 43 FR 11815, Mar. 22, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

§ 226.20 Settlement of damages claimed.

(a) Lessee or his authorized representative or geophysical permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages as may be occasioned by operations. Commencement money shall be a credit toward the settlement of the total damages occasioned by the drilling and completion of the well for which it was paid. Such damages shall be paid to the owner of the surface and by him apportioned among the parties interested in the surface, whether as owner, surface lessee, or otherwise, as the parties may mutually agree or as their interests may appear. If lessee or his authorized representative and surface owner are unable to agree concerning damages, the same shall be determined by arbitration. Nothing herein contained shall

be construed to deny any party the right to file an action in a court of competent jurisdiction if he is dissatisfied with the amount of the award.

(b) Surface owners shall notify their lessees or tenants of the regulations in this part and of the necessary procedure to follow in all cases of alleged damages. If so authorized in writing, surface lessees or tenants may represent the surface owners.

(c) In settlement of damages on restricted land all sums due and payable shall be paid to the Superintendent for credit to the account of the Indian entitled thereto. The Superintendent will make the apportionment between the Indian landowner or owners and surface Lessee of record.

(d) Any person claiming an interest in any leased tract or in damages thereto, must furnish to the Superintendent a statement in writing showing said claimed interest. Failure to furnish such statement shall constitute a waiver of notice and estop said person from claiming any part of such damages after the same shall have been disbursed.

[39 FR 22254, June 21, 1974, as amended at 41 FR 50649, Nov. 17, 1976; 43 FR 8137, Feb. 28, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 226.21 Procedure for settlement of damages claimed.

Where the surface owner or his lessee suffers damage due to the oil and gas operations and/or marketing of oil or gas by lessee or his authorized representative, the procedure for recovery shall be as follows:

(a) The party or parties aggrieved shall, as soon as possible after the discovery of any damages, serve written notice to Lessee or his authorized representative as provided by § 226.18. Written notice shall contain the nature and location of the alleged damages, the date of occurrence, the names of the party or parties causing said damages, and the amount of damages. It is not intended by this requirement to limit the time within which action may be brought in the courts to less than the 90-day period allowed by section 2 of the Act of March 2, 1929 (45 Stat. 1478, 1479).

(b) If the alleged damages are not adjusted at the time of such notice, Lessee or his authorized representative shall try to adjust the claim with the party or parties aggrieved within 20 days from receipt of the notice. If the claimant is the owner of restricted property and a settlement results, a copy of the settlement agreement shall be filed with the Superintendent. If the settlement agreement is approved by the Superintendent, payment shall be made to the Superintendent for the benefit of said claimant.

(c) If the parties fail to adjust the claim within the 20 days specified, then within 10 days thereafter each of the interested parties shall appoint an arbitrator who immediately upon their appointment shall agree upon a third arbitrator. If the two arbitrators shall fail to agree upon a third arbitrator within 10 days, they shall immediately notify the parties in interest. If said parties cannot agree upon a third arbitrator within 5 days after receipt of such notice, the Superintendent shall appoint the third arbitrator.

(d) As soon as the third arbitrator is appointed, the arbitrators shall meet; hear the evidence and arguments of the parties; and examine the lands, crops, improvements, or other property alleged to have been injured. Within 10 days they shall render their decision as to the amount of the damage due. The arbitrators shall be disinterested persons. The fees and expenses of the third arbitrator shall be borne equally by the claimant and Lessee or his authorized representative. Each Lessee or his authorized representative and claimant shall pay the fee and expenses for the arbitrator appointed by him.

(e) When an act of an oil or gas lessee or his authorized representative results in injury to both the surface owner and his lessee, the parties aggrieved shall join in the appointment of an arbitrator. Where the injury complained of is chargeable to one or more oil or gas Lessee, or his authorized representative, such lessee or said representative shall join in the appointment of an arbitrator.

(f) Any two of the arbitrators may make a decision as to the amount of damage due. The decision shall be in writing and forthwith shall be served

upon the parties in interest. Each party shall have 90 days from the date the decision is served in which to file an action in a court of competent jurisdiction. If no such action is filed within said time and the award is against Lessee or his/her authorized representative, he/she shall pay the same, together with interest at an annual rate established for the Internal Revenue Service from date of award, within 10 days after the expiration of said period for filing an action.

(g) Lessee or his authorized representative shall file with the Superintendent a report on each settlement agreement, setting out the nature and location of the damage, date, and amount of the settlement, and any other pertinent information.

[39 FR 22254, June 21, 1974, as amended at 41 FR 50649, Nov. 17, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

EDITORIAL NOTE: At 55 FR 33115, Aug. 14, 1990, the Bureau of Indian Affairs published a document amending § 226.21(f) by removing the word ''forthwith'' from the first sentence and adding the word ''forthwith'' to follow directly after the word ''served''; however, because these terms do not exist in the first sentence, this amendment could not be incorporated.

§ 226.22 Prohibition of pollution.

(a) All operators, contractors, drillers, service companies, pipe pulling and salvaging contractors, or other persons, shall at all times conduct their operations and drill, equip, operate, produce, plug and abandon all wells drilled for oil or gas, service wells or exploratory wells (including seismic, core and stratigraphic holes) in a manner that will prevent pollution and the migration of oil, gas, salt water or other substance from one stratum into another, including any fresh water bearing formation.

(b) Pits for drilling mud or deleterious substance used in the drilling, completion, recompletion, or workover of any well shall be constructed and maintained to prevent pollution of surface and subsurface fresh water. These pits shall be enclosed with a fence of at least four strands of barbed wire, or an approved substitute, stretched taut to adequately braced corner posts, unless the surface owner, user, or the Superintendent gives consent to the contrary. Immediately after completion of operations, pits shall be emptied and leveled unless otherwise requested by surface owner or user.

(c) Drilling pits shall be adequate to contain mud and other material extracted from wells and shall have adequate storage to maintain a supply of mud for use in emergencies.

(d) No earthen pit, except those used in the drilling, completion, recompletion or workover of a well, shall be constructed, enlarged, reconstructed or used without approval of the Superintendent. Unlined earthen pits shall not be used for the continued storage of salt water or other deleterious substances.

(e) Deleterious fluids other than fresh water drilling fluids used in drilling or workover operations, which are displaced or produced in well completion or stimulation procedures, including but not limited to fracturing, acidizing, swabbing, and drill stem tests, shall be collected into a pit lined with plastic of at least 30 mil or a metal tank and maintained separately from above-mentioned drilling fluids to allow for separate disposal.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

§ 226.23 Easements for wells off leased premises.

The Superintendent, with the consent of the Osage Tribal Council, may grant commercial and noncommercial easements for wells off the leased premises to be used for purposes associated with oil and gas production. Rental payable to the Osage Tribe for such easements shall be an amount agreed to by Grantee and the Osage Tribal Council subject to the approval of the Superintendent. Grantee shall be responsible for all damages resulting from the use of such wells and settlement therefor shall be made as provided in § 226.21.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

§ 226.24 Lessee's use of water.

Lessee or his contractor may, with the approval of the Superintendent, use

water from streams and natural water courses to the extent that same does not diminish the supply below the requirements of the surface owner from whose land the water is taken. Similarly, Lessee or his contractor may use water from reservoirs formed by the impoundment of water from such streams and natural water courses, provided such use does not exceed the quantity to which they originally would have been entitled had the reservoirs not been constructed. Lessee or his contractor may install necessary lines and other equipment within the Osage Mineral Estate to obtain such water. Any damage resulting from such installation shall be settled as provided in § 226.21.

§ 226.25 Gas well drilled by oil lessees and vice versa.

Prior to drilling, the oil or gas lessee shall notify the other lessees of his/her intent to drill. When an oil lessee in drilling a well encounters a formation or zone having indications of possible gas production, or the gas lessee in drilling a well encounters a formation or zone having indication of possible oil production, he/she shall immediately notify the other lessee and the Superintendent. Lessee drilling the well shall obtain all information which a prudent operator utilizes to evaluate the productive capability of such formation or zone.

(a) *Gas well to be turned over to gas lessee.* If the oil lessee drills a gas well, he/she shall, without removing from the well any of the casing or other equipment, immediately shut the well in and notify the gas lessee and the Superintendent. If the gas lessee does not, within 45 days after receiving notice and cost of drilling, elect to take over such well and reimburse the oil lessee the cost of drilling, including all damages paid and the cost in-place of casing, tubing, and other equipment, the oil lessee shall immediately confine the gas to the original stratum. The disposition of such well and the production therefrom shall then be subject to the approval of the Superintendent. In the event the oil lessee and gas lessee cannot agree on the cost of the well, such cost shall be apportioned between the oil and gas lessee by the Superintendent. If such apportionment is not accepted, the well shall be plugged by the oil and gas lessee who drilled the well.

(b) *Oil well to be turned over to oil lessee.* If the gas lessee drills an oil well, he/she shall immediately, without removing from the well any of the casing or other equipment, notify the oil lessee and the Superintendent. If the oil lessee does not, within 45 days after receipt of notice and cost of drilling, elect to take over the well, he/she shall immediately notify the gas lessee, and the disposition of such well and the production therefrom shall be subject to the approval of the Superintendent. Should the oil lessee elect to take over the well, he/she shall pay the gas lessee the cost of drilling the same, including all damages paid and cost inplace of casing and other equipment. In the event the oil lessee and gas lessee cannot agree on the cost of the well, such cost shall be apportioned between the oil and gas lessee by the Superintendent. If such apportionment is not accepted, the well shall be plugged by the oil and gas lessee who drilled the well.

(c) *Lands not leased.* If the gas lessee shall drill an oil well upon lands not leased for oil purposes or vice versa, the Superintendent may, until such time as said lands are leased, permit the lessee who drilled the well to operate and market the production therefrom. When said lands are leased, the lessee who drilled and completed the well shall be reimbursed by the oil or gas lessee, for the cost of drilling said well, including all damages paid and the cost in-place of casing, tubing, and other equipment. If the lessee does not elect to take over said well as provided above, the disposition of such well and the production therefrom shall be determined by the Superintendent. In the event the oil lessee and gas lessee cannot agree on the cost of the well, such cost shall be apportioned between the oil and gas lessee by the Superintendent. If such apportionment is not accepted, the well shall be plugged by the oil and gas lessee who drilled the well.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

EDITORIAL NOTE: At 55 FR 33115, Aug. 14, 1990, the Bureau of Indian Affairs published a

document amending §226.25(b) by removing in the third sentence the word ''the'' before the word ''receipt'', removing the word ''such'' before the word ''notice'', removing the words ''notice of the,'' and in the fourth sentence inserting the word ''casing'' preceding and followed by commas after the word ''tubing''; however, because these terms do not exist in the third and fourth sentences, this amendment could not be incorporated.

§ 226.26 Determining cost of well.

The term ''cost of drilling'' as applied where one lessee takes over a well drilled by another, shall include all reasonable, usual, necessary, and proper expenditures. A list of expenses mentioned in this section shall be presented to proposed purchasing lessee within 10 days after the completion of the well. In the event of a disagreement between the parties as to the charges assessed against the well that is to be taken over, such charges shall be determined by the Superintendent.

§ 226.27 Gas for operating purposes and tribal use.

(a) *Gas to be furnished oil lessee.* Lessee of a producing gas lease shall furnish the oil lessee sufficient gas for operating purposes at a rate to be agreed upon, or on failure to agree the rate shall be determined by the Superintendent: *Provided,* That the oil lessee shall at his own expense and risk, furnish and install the necessary connections to the gas lessee's well or pipeline. All such connections shall be reported in writing to the Superintendent.

(b) *Use of gas by Osage Tribe.* (1) Gas from any well or wells shall be furnished any Tribal-owned building or enterprise at a rate not to exceed the price less royalty being received or offered by a gas purchaser: *Provided,* That such requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is available above that needed for lease operation and that no waste would result. In the absence of a gas purchaser the rate to be paid by the Osage Tribe shall be determined by the Superintendent based on prices being paid by purchasers in the Osage Mineral Estate. The Osage Tribe is to furnish all necessary material and labor for such connection with Lessee's gas system. The use of such gas shall be at the risk of the Osage Tribe at all times.

(2) Any member of the Osage Tribe residing in Osage County and outside a corporate city is entitled to the use at his own expense of not to exceed 400,000 cubic feet of gas per calendar year for his principal residence at a rate not to exceed the amount paid by a gas purchaser plus 10 percent: *Provided,* That such requirement shall be subject to the determination by the Superintendent that gas in sufficient quantities is available above that needed for lease operation and that no waste would result. In the absence of a gas purchaser the amount to be paid by the Tribal member shall be determined by the Superintendent. Gas to Tribal members is not royalty free. The Tribal member is to furnish all necessary material and labor for such connection to Lessee's gas system, and shall maintain his own lines. The use of such gas shall be at the risk of the Tribal member at all times.

(3) Gas furnished by Lessee under paragraphs (b) (1) and (2) of this section may be terminated only with the approval of the Superintendent. Written application for termination must be made to the Superintendent showing justification.

CESSATION OF OPERATIONS

§ 226.28 Shutdown, abandonment, and plugging of wells.

No productive well shall be abandoned until its lack for further profitable production of oil and/or gas has been demonstrated to the satisfaction of the Superintendent. Lessee shall not shut down, abandon, or otherwise discontinue the operation or use of any well for any purpose without the written approval of the Superintendent. All applications for such approval shall be submitted to the Superintendent on forms furnished by him/her.

(a) Application for authority to permanently shut down or discontinue use or operation of a well shall set forth justification, probable duration the means by which the well bore is to be protected, and the contemplated eventual disposition of the well. The method of conditioning such well shall be

subject to the approval of the Superintendent.

(b) Prior to permanent abandonment of any well, the oil lessee or the gas lessee, as the case may be, shall offer the well to the other for his recompletion or use under such terms as may be mutually agreed upon but not in conflict with the regulations. Failure of the Lessee receiving the offer to reply within 10 days after receipt thereof shall be deemed as rejection of the offer. If, after indicating acceptance, the two parties cannot agree on the terms of the offer within 30 days, the disposition of such well shall be determined by the Superintendent.

(c) The Superintendent is authorized to shut in a lease when the lessee fails to comply with the terms of the lease, the regulations, and/or orders of the Superintendent.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

§ 226.29 Disposition of casings and other improvements.

(a) Upon termination of lease, permanent improvements, unless otherwise provided by written agreement with the surface owner and filed with the Superintendent, shall remain a part of said land and become the property of the surface owner upon termination of the lease, other than by cancellation. Exceptions include personal property not limited to tools, tanks, pipelines, pumping and drilling equipment, derricks, engines, machinery, tubing, and the casings of all wells: Provided, That when any lease terminates, all such personal property shall be removed the word ''terminates''; and in the last sentence of the paragraph, within 90 days or such reasonable extension of time as may be granted by the Superintendent. Otherwise, the ownership of all casings shall revert to Lessor and all other personal property and permanent improvements to the surface owner. Nothing herein shall be construed to relieve lessee of responsibility for removing any such personal property or permanent improvements from the premises if required by the Superintendent and restoring the premises as nearly as practicable to the original state.

(b) Upon cancellation of lease. When there has been a cancellation for cause, Lessor shall be entitled and authorized to take immediate possession of the lease premises and all permanent improvements and all other equipment necessary for the operation of the lease.

(c) Wells to be abandoned shall be promptly plugged as prescribed by the Superintendent. Applications to plug shall include a statement affirming compliance with § 226.28(b) and shall set forth reasons for plugging, a detailed statement of the proposed work including kind, location, and length of plugs (by depth), plans for mudding and cementing, testing, parting and removing casing, and any other pertinent information: *Provided*, That the Superintendent may give oral permission and instructions pending receipt of a written application to plug a newly drilled hole. Lessee shall remit a fee of $15 with each written application for authority to plug a well. This fee will be refunded if permission is not granted.

(d) Lessee shall plug and fill all dry or abandoned wells in a manner to confine the fluid in each formation bearing fresh water, oil, gas, salt water, and other minerals, and to protect it against invasion of fluids from other sources. Mud-laden fluid, cement, and other plugs shall be used to fill the hole from bottom to top: *Provided*, That if a satisfactory agreement is reached between Lessee and the surface owner, subject to the approval of the Superintendent, Lessee may condition the well for use as a fresh water well and shall so indicate on the plugging record. The manner in which plugging material shall be introduced and the type of material so used shall be subject to the approval of the Superintendent. Within 10 days after plugging, Lessee shall file with the Superintendent a complete report of the plugging of each well. When any well is plugged and abandoned, Lessee shall, within 90 days, clean up the premises around such well to the satisfaction of the Superintendent.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33115, Aug. 14, 1990]

REQUIREMENTS OF LESSEES

§ 226.30 Lessees subject to Superintendent's orders; books and records open to inspection.

Lessee shall comply with all orders or instructions issued by the Superintendent. The Superintendent or his representative may enter upon the leased premises for the purpose of inspection. Lessee shall keep a full and correct account of all operations, receipts, and disbursements and make reports thereof, as required. Lessee's books and records shall be available to the Superintendent for inspection.

§ 226.31 Lessee's process agents.

(a) Before actual drilling or development operations are commenced on leased lands, Lessee or Assignee, if not a resident of the State of Oklahoma, shall appoint a local or resident representative within the State of Oklahoma on whom the Superintendent may serve notice or otherwise communicate in securing compliance with the regulations in this part, and shall notify the Superintendent of the name and post office address of the representative appointed.

(b) Where several parties own a lease jointly, one representative or agent shall be designated whose duties shall be to act for all parties concerned. Designation of such representative should be made by the party in charge of operations.

(c) In the event of the incapacity or absence from the State of Oklahoma of such designated local or resident representative, Lessee shall appoint a substitute to serve in his stead. In the absence of such representative or appointed substitute, any employee of Lessee upon the leased premises or person in charge of drilling or related operations thereon shall be considered the representative of Lessee for the purpose of service of orders or notices as herein provided.

§ 226.32 Well records and reports.

(a) Lessee shall keep accurate and complete records of the drilling, redrilling, deepening, repairing, treating, plugging, or abandonment of all wells. These records shall show all the formations penetrated, the content and character of oil, gas, or water in each formation, and the kind, weight, size, landed depth and cement record of casing used in drilling each well; the record of drill-stem and other bottom hole pressure or fluid sample surveys, temperature surveys, directional surveys, and the like; the materials and procedure used in the treating or plugging of wells or in preparing them for temporary abandonment; and any other information obtained in the course of well operation.

(b) Lessee shall take such samples and make such tests and surveys as may be required by the Superintendent to determine conditions in the well or producing reservoir and to obtain information concerning formations drilled, and shall furnish reports thereof as required by the Superintendent.

(c) Within 10 days after completion of operations on any well, Lessee shall transmit to the Superintendent the applicable information on forms furnished by the Superintendent; a copy of electrical, mechanical or radioactive log, or other types of survey of the well bore; and core analysis obtained from the well. Lessee shall also submit other reports and records of operations as may be required and in the manner and form prescribed by the Superintendent.

(d) Lessee shall measure production of oil, gas, and water from individual wells at reasonably frequent intervals to the satisfaction of the Superintendent.

(e) Upon request and in the manner and form prescribed by the Superintendent, Lessee shall furnish a plat showing the location, designation, and status of all wells on the leased lands, together with such other pertinent information as the Superintendent may require.

§ 226.33 Line drilling.

Lessee shall not drill within 300 feet of boundary line of leased lands, nor locate any well or tank within 200 feet of any public highway, any established watering place, or any building used as a dwelling, granary, or barn, except with the written permission of the Superintendent. Failure to obtain advance written permission from the Superintendent shall subject lessee to

cancellation of his/her lease and/or plugging of the well.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33116, Aug. 14, 1990]

§ 226.34 Wells and tank batteries to be marked.

Lessee shall clearly and permanently mark all wells and tank batteries in a conspicuous place with number, legal description, operator, and telephone number, and shall take all necessary precautions to preserve these markings.

[55 FR 33116, Aug. 14, 1990]

§ 226.35 Formations to be protected.

Lessee shall, to the satisfaction of the Superintendent, take all proper precautions and measures to prevent damage or pollution of oil, gas, fresh water, or other mineral bearing formations.

§ 226.36 Control devices.

In drilling operations in fields where high pressures, lost circulation, or other conditions exist which could result in blowouts, lessee shall install an approved gate valve or other controlling device which is in proper working condition for use until the well is completed. At all times preventative measures must be taken in all well operations to maintain proper control of subsurface strata.

[55 FR 33116, Aug. 14, 1990]

§ 226.37 Waste of oil and gas.

Lessee shall conduct all operations in a manner that will prevent waste of oil and gas and shall not wastefully utilize oil or gas. The Superintendent shall have the authority to impose such requirements as he deems necessary to prevent waste of oil and gas and to promote the greatest ultimate recovery of oil and gas. Waste as applied herein includes, but is not limited to, the inefficient excessive or improper use or dissipation of reservoir energy which would reasonably reduce or diminish the quantity of oil or gas that might ultimately be produced, or the unnecessary or excessive surface loss or destruction, without beneficial use, of oil and/or gas.

§ 226.38 Measuring and storing oil.

All production run from the lease shall be measured according to methods and devices approved by the Superintendent. Facilities suitable for containing and measuring accurately all crude oil produced from the wells shall be provided by Lessee and shall be located on the leasehold unless otherwise approved by the Superintendent. Lessee shall furnish to the Superintendent a copy of 100-percent capacity tank table for each tank. Meters and installations for measuring oil must be approved, and tests of their accuracy shall be made when directed by the Superintendent.

§ 226.39 Measurement of gas.

All gas, required to be measured, shall be measured by meter (preferably of the orifice meter type) unless otherwise agreed to by the Superintendent. All gas meters must be approved by the Superintendent and installed at the expense of Lessee or purchaser at such places as may be agreed to by the Superintendent. For computing the volume of all gas produced, sold or subject to royalty, the standard of pressure shall be 14.65 pounds to the square inch, and the standard of temperature shall be 60 degrees F. All measurements of gas shall be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was acutally measured, unless otherwise authorized in writing by the Superintendent.

§ 226.40 Use of gas for lifting oil.

Lessee shall not use natural gas from a distinct or separate stratum for the purpose of flowing or lifting the oil, except where said Lessee has an approved right to both the oil and the gas, and then only with the approval of the Superintendent of such use and of the manner of its use.

§ 226.41 Accidents to be reported.

Lessee shall make a complete report to the Superintendent of all accidents, fires, or acts of theft and vandalism occurring on the leased premises.

PENALTIES

§ 226.42 Penalty for violation of lease terms.

Violation of any of the terms or conditions of any lease or of the regulations in this part shall subject the lease to cancellation by the Superintendent, or Lessee to a fine of not more than $500 per day for each day of such violation or noncompliance with the orders of the Superintendent, or to both such fine and cancellation. Fines not received within 10 days after notice of the decision shall be subject to late charges at the rate of not less than 1½ percent per month for each month or fraction thereof until paid. The Osage Tribal Council, subject to the approval of the Superintendent, may waive the late charge.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33116, Aug. 14, 1990]

§ 226.43 Penalties for violation of certain operating regulations.

In lieu of the penalties provided under § 226.42, penalties may be imposed by the Superintendent for violation of certain sections of the regulations of this part as follows:

(a) For failure to obtain permission to start operations required by § 226.16(b), $50 per day until permission is obtained.

(b) For failure to file records required by § 226.32, $50 per day until compliance is met.

(c) For failure to mark wells and tank batteries as required by § 226.34, $50 for each well and tank battery.

(d) For failure to construct and maintain pits as required by § 226.22, $50 for each day after operations are commenced on any well until compliance is met.

(e) For failure to comply with § 226.36 regarding valve or other approved controlling device, $100.

(f) For failure to notify Superintendent before drilling, redrilling, deepening, plugging, or abandoning any well, as required by §§ 226.16(c) and 226.25, $200.

(g) For failure to properly care for and dispose of deleterious fluids as provided in § 226.22, $500 per day until compliance is met.

(h) For failure to file plugging reports as required by § 226.29 and for failure to file reports as required by § 226.13, $50 per day for each violation until compliance is met.

(i) For failure to perform or start an operation within 5 days after ordered by the Superintendent in writing under authority provided in this part, if said operation is thereafter performed by or through the Superintendent, the actual cost of performance thereof, plus 25 percent.

(j) Lessee or his/her authorized representative is hereby notified that criminal procedures are provided by 18 U.S.C. 1001 for knowingly filing fraudulent reports and information.

[39 FR 22254, June 21, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 55 FR 33116, Aug. 14, 1990]

APPEALS AND NOTICES

§ 226.44 Appeals.

Any person, firm or corporation aggrieved by any decision or order issued by or under the authority of the Superintendent, by virtue of the regulations in this part, may appeal pursuant to 25 CFR part 2.

[55 FR 33116, Aug. 14, 1990]

§ 226.45 Notices.

Notices and orders issued by the Superintendent to the representative and/or operator shall be binding on the lessee. The Superintendent may in his/her discretion increase the time allowed in his/her orders and notices.

[55 FR 33116, Aug. 14, 1990]

§ 226.46 Information collection.

The Office of Management and Budget has determined that the information collection requirements contained in this part need not be submitted for clearance pursuant to 44 U.S.C. 3501 *et seq.*

[55 FR 33116, Aug. 14, 1990]

PART 227—LEASING OF CERTAIN LANDS IN WIND RIVER INDIAN RESERVATION, WYOMING, FOR OIL AND GAS MINING

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227.25 Inspection of premises, books and accounts.
227.26 Assignments and overriding royalties.
227.27 Stipulations.
227.28 Cancellations.
227.29 Fees.
227.30 Forms.

AUTHORITY: Sec. 1, 39 Stat. 519, unless otherwise noted.

SOURCE: 22 FR 10622, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 227.1 Definitions.

(a) The term ''superintendent'' in this part refers to the superintendent or other officers of the Bureau of Indian Affairs or of the Government who may have jurisdiction over the Shoshone or Wind River Reservation.

(b) The term ''supervisor'' in this part refers to a representative of the Secretary of the Interior, under direction of the Director of the U.S. Geological Survey, authorized and empowered to supervise and direct operations under oil and gas mining leases, to furnish scientific and technical information and advice, to ascertain and record the amount and value of production, and to determine and record rentals and royalties due and paid.

CROSS REFERENCE: For rules and regulations of the Geological Survey, see 30 CFR chapter II.

HOW TO ACQUIRE LEASES

§ 227.2 Applications for leases.

Applications for leases should be made to the superintendent.

§ 227.3 Leases to citizens of the United States except Government employees.

Leases will be made only to persons who are citizens of the United States or have declared their intention to become so, or corporations which are organized under the laws of the United States or one of the States or Territories: *Provided*, That no lease, assignment thereof, or interest therein will be approved to any employee or employees of the United States Government, whether connected with the Bureau or otherwise, and no employee of the Interior Department shall be permitted to acquire any interest in such leases by ownership of stock in corporations having leases or in any other manner.

(R.S. 2078; 25 U.S.C. 68)

§ 227.4 Sale of oil and gas leases.

(a) At such times and in such manner as he may deem appropriate, after being authorized by the Joint Business Council of the Shoshone and Arapahoe Tribes or its authorized representative, the superintendent shall publish notices at least thirty days prior to the sale, unless a shorter period is authorized by the Secretary of the Interior or his authorized representative, that oil and gas leases on specific tracts, each

of which shall be in a reasonably compact body, will be offered to the highest responsible bidder for a bonus consideration, in addition to stipulated rentals and royalties. Each bid must be accompanied by a cashier's check, certified check, or postal money order, payable to the payee designated in the invitation to bid, in an amount not less than 25 percent of the bonus bid. Within 30 days after notification of being the successful bidder, said bidder must remit the balance of the bonus, the first year's rental, and his share of the advertising costs, and shall file with the superintendent the lease in completed form. The superintendent may for good and sufficient reasons, extend the time for completion and submission of the lease form, but no extension shall be granted for remitting the balance of monies due. If the successful bidder fails to pay the full consideration within said period, or fails to file the completed lease within said period or extension thereof, or if the lease is disapproved through no fault of the lessor or the Department of the Interior, 25 percent of the bonus bid will be forfeited for the use and benefit of the Shoshone and Arapahoe Tribes.

(b) All notices or advertisements of sales of oil and gas leases shall reserve to the Secretary of the Interior the right to reject all bids when in his judgment the interests of the Indians will be best served by so doing, and that if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary of the Interior shall determine that it is unwise in the interests of the Indians to accept the highest bid, the Secretary may readvertise such lease for sale, or if deemed advisable, with the consent of the tribal council or other governing tribal authorities, a lease may be made by private negotiations. The successful bidder or bidders will be required to pay his or their share of the advertising costs. Amounts received from unsuccessful bidders will be returned; but when no bid is accepted on a tract, the costs of advertising will be assessed against the applicant who requested that said tract be advertised.

[22 FR 10622, Dec. 24, 1957, as amended at 25 FR 7185, July 29, 1960. Redesignated at 47 FR 13327, Mar. 30, 1982]

§227.5 Terms of leases, procedure for renewal and execution.

(a) Leases shall be for a period of twenty years with the preferential right in the lessee to renew the same for successive periods of ten years each upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior or his authorized representative, unless otherwise provided by law at the expiration of any such period. Applications for renewal of leases shall be filed with the superintendent within ninety days prior to the date of expiration of the lease. One copy of the application for renewal shall be filed by the applicant with the Joint Business Council of the Shoshone and Arapahoe Tribes and no lease shall be renewed unless the Joint Business Council or its authorized representative is afforded an opportunity to present the Council's views to the Secretary of the Interior or his authorized representative.

(b) The Secretary of the Interior or his authorized representative may execute oil and gas leases with the consent of the Joint Business Council or its authorized representative, and may execute renewals of leases after consultation with the Joint Business Council or its authorized representative.

[25 FR 7185, July 29, 1960. Redesignated at 47 FR 13327, Mar. 30, 1982]

§227.6 Corporations and corporate information.

(a) If the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute papers; and with its first application it shall also file a certified copy of its articles of incorporation, and, if foreign to the state in which the lands are located, evidence showing compliance with the corporation laws thereof. Statements of changes in officers and stockholders shall be furnished by a corporation lessee to the superintendent January 1 of each year, and at such other times as may be requested.

(b) Whenever deemed advisable in any case the superintendent may require a corporation applicant or lessee to file:

(1) List of officers, principal stockholders, and directors, with post-office

addresses and number of shares held by each.

(2) A sworn statement of the proper officer showing:

(i) The total number of shares of the capital stock actually issued and the amount of cash paid into the treasury on each share sold; or, if paid in property, the kind, quantity, and value of same paid per share.

(ii) Of the stock sold, how much remains unpaid and subject to assessment.

(iii) The amount of cash the company has in its treasury and elsewhere.

(iv) The property, exclusive of cash owned by the company and its value.

(v) The total indebtedness of the company and the nature of its obligations.

(vi) Whether the applicant or any person controlling, controlled by or under common control with the applicant has filed any registration statement, application for registration, prospectus or offering sheet with the Securities and Exchange Commission pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934 or said Commission's rules and regulations under said acts; if so, under what provision of said acts or rules and regulations; and what disposition of any such statement, application, prospectus or offering sheet has been made.

(c) Affidavits of individual stockholders, setting forth in what corporations, or with what persons, firms, or associations such individual stockholders are interested in mining leases on restricted lands within the state, and whether they hold such interest for themselves or in trust.

CROSS REFERENCE: For rules and regulations of the Securities and Exchange Commission, see 17 CFR chapter II.

§ 227.7 Additional information from applicant.

The superintendent may, either before or after approval of a lease, call for any additional information desired to carry out the regulations in this part. If a lessee shall fail to furnish the papers necessary to put his lease and bond in proper form for consideration, the superintendent shall forward such lease for disapproval.

§ 227.8 Bonds.

The provisions of § 211.6 of this chapter, or as hereafter amended, are applicable to leases under this part.

§ 227.9 Acreage limitation: Leases on noncontiguous tracts.

No person, firm, or corporation will be allowed to lease for oil and gas more than 10,240 acres in the aggregate. The land contained in the lease shall be described by legal subdivisions, and leases may be executed to cover only adjoining or contiguous subdivisions. In case a lessee is a successful bidder for two or more tracts of land which are not contiguous, separate leases shall be executed.

§ 227.10 Minerals other than oil and gas.

Unreserved, unwithdrawn, and unallotted lands which have not been leased for oil and gas under the act of August 21, 1916 (39 Stat. 519) and which are not chiefly valuable therefor, are subject to mineral application or mineral entry, for minerals other than oil and gas, under the supervision of the Bureau of Land Management.

§ 227.11 Bureau of Land Management to be furnished copy of lease.

The Bureau of Land Management shall be furnished with a copy of each lease signed by the Secretary of the Interior.

§ 227.12 Mineral reserves in nonmineral entries.

Where lands have been leased under authority of said act of August 21, 1916 (39 Stat. 519), and nonmineral entry is subsequently lawfully made for such lands with a view to obtaining a restricted patent therefor, all such subsequently allowed nonmineral entries shall be with the mineral reservation prescribed by the act of July 17, 1914 (38 Stat. 509).

§ 227.13 Vested rights to be respected.

All drilling and other oil and natural gas developments and mining operations, work, and improvements, and all other acts and things necessary to be done, in connection with the exploration for mining and production of oil

and natural gas from the leased premises, under the terms and conditions of a lease shall be performed with due regard to the rights, statutory and otherwise, of others, if any, who may have or who may acquire a lawful claim or estate to the leased premises, separate and distinct from the oil and gas or other mineral therein contained. See act of July 17, 1914 (38 Stat. 509).

§ 227.14 Government reserves right to purchase oil and gas.

In time of war or other public emergency any of the executive departments of the United States Government shall have the option to purchase at the posted market price on the date of sale all or any part of the minerals produced under any lease.

RENTS AND ROYALTIES

§ 227.15 Manner of payment.

All payments due the lessor shall be made to the superintendent for the benefit of the Shoshone Indian Tribe, in accordance with the act of August 21, 1916 (39 Stat. 519), and no credit will be given any lessee for payments made otherwise. Payments of rentals and royalties except the first year's rental, which shall be paid to the superintendent as prescribed in § 227.4 shall be transmitted to the superintendent through the supervisor. All such payments shall be accompanied by a statement, in triplicate, by the lessee, showing the specific items of royalty or rental that the remittance is intended to cover, and payment of royalties on production shall be made not later than the last day of the calendar month following the production for which such payment is to be made.

§ 227.16 Crediting advance annual payments.

In the event of discovery of minerals in paying quantities all advance rents and advance royalties shall be allowed as credit on stipulated royalties as they accrue for the year for which such advance payments have been made. No refund of any such advance payment made under any lease will be allowed in the event the royalty on production for the year is not sufficient to equal such advance payment; nor will any part of the moneys so paid be refunded to the lessee because of any subsequent surrender or cancellation of the lease.

§ 227.17 Rates of rents and royalties.

(a) The lessee shall pay, beginning with the date of execution of leases by the Secretary of the Interior, a rental of $1.25 per acre per annum in advance during the continuance thereof, together with a royalty of 12½ percent of the value or amount of all oil, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased, save and except oil and/or gas used by the lessee for development and operation purposes on the lease, which oil or gas shall be royalty free. A higher rate of royalty may be fixed by the Secretary of the Interior or his authorized representative, prior to the advertisement of land for oil and gas leases. During the period of supervision, ''value'' for the purposes of the lease may, in the discretion of the Secretary of the Interior, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary of the Interior, be deemed mere evidence of or conclusive evidence of such value. When paid in value, such royalties shall be due and payable monthly at such time as the lease provides; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor. The lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced. The lessee shall be in no manner responsible or held liable

for loss or destruction of such oil by causes beyond his control.

(b) The proceeds from all leases shall be taken up in the accounts of the superintendent for appropriate deposit for the benefit of the Indians.

§ 227.18 Free use of gas by lessor.

If the leased premises produce gas in excess of the lessee's requirements for the development and operation of said premises, then the lessor may use sufficient gas, free of charge, for any desired school or other buildings belonging to the tribe, by making his own connections to a regulator installed, connected to the well and maintained by the lessee, and the lessee shall not be required to pay royalty on gas so used. The use of such gas shall be at the lessor's risk at all times.

§ 227.19 Division orders.

(a) Lessees may make arrangements with the purchasers of oil for the payment of the royalties on production to the superintendent by such purchasers, but such arrangements, if made, shall not operate to relieve a lessee from responsibility should the purchaser fail or refuse to pay such royalties when due. Where lessees avail themselves of this privilege, division orders permitting the pipeline companies or other purchasers of the oil to withhold the royalty interest shall be executed and forwarded to the supervisor for approval, as pipeline companies are not permitted to accept or run oil from leased Indian lands until after the approval of a division order showing that the lessee has a lease regularly approved and in effect. When the lessee company runs its own oil, it shall execute an intracompany division order and forward it to the supervisor for his consideration. The right is reserved for the supervisor to cancel a division order at any time or require the pipeline company to discontinue to run the oil of any lessee who fails to operate the lease properly or otherwise violates the provisions of the lease, of the regulations in this part, or of the operating regulations.

(b) When oil is taken by authority of a division order, the lessee or his representatives shall be actually present when the oil is gaged and records are made of the temperature, gravity and impurities. The lessee will be held responsible for the correctness and the correct recording and reporting of all the foregoing measurements, which except lowest gage, shall be made at the time the oil is turned into the pipeline. Failure of the lessee to perform properly these duties will subject the division order to revocation.

CROSS REFERENCE: For oil and gas operating regulations of the Geological Survey, see 30 CFR part 221.

OPERATIONS

§ 227.20 Permission to start operations.

(a) No operations will be permitted on any lease before it is executed by the Secretary of the Interior.

(b) Written permission must be secured from the supervisor or his representative before any operations are started on the leased premises. After such permission is secured the operations must be in accordance with the operating regulations promulgated by the Secretary of the Interior. Copies of the regulations in this part may be secured from either the supervisor or the superintendent, and no operations should be attempted without a study of the operating regulations.

§ 227.21 Restrictions on operations.

(a) All leases issued under the provisions of the regulations in this part shall be subject to imposition by the Secretary of the Interior of such restrictions as to time or times for the drilling of wells and as to the production from any well or wells as in his judgment may be necessary or proper for the protection of the natural resources of the leased land and in the interest of the lessor. In the exercise of his judgment the Secretary of the Interior may take into consideration, among other things, the Federal laws, State laws, regulations by competent Federal or State authorities, lawful agreements among operators regulating either drilling or production, or both, and any regulatory action desired by tribal authorities.

(b) All leases issued pursuant to the regulations in this part shall be subject to a co-operative or unit development

plan affecting the leased lands if and when required by the Secretary of the Interior, but no lease shall participate in any cooperative or unit plan without prior approval of the Secretary of the Interior.

§ 227.22 Diligence and prevention of waste.

The lessee shall exercise diligence in drilling and operating wells for oil and gas on the leased lands while such products can be secured in paying quantities; carry on all operations in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; plug securely all wells before abandoning the same and to shut off effectually all water from the oil or gas-bearing strata; not drill any well within 200 feet of any house or barn on the premises without the lessor's written consent; carry out at his expense all reasonable orders and requirements of the supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; bury all pipelines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; pay all damages to crops, buildings, and other improvements on the premises occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond his control.

§ 227.23 Wells.

The lessee shall agree (a) to drill and produce all wells necessary to offset or protect the leased land from drainage by wells on adjoining lands not the property of the lessor, or in lieu thereof, compensate the lessor in full each month for the estimated loss of royalty through drainage: *Provided*, That during the period of supervision by the Secretary of the Interior, the necessity for offset wells shall be determined by the supervisor and payment in lieu of drilling and producing shall be with the consent of, and in an amount determined by the Secretary of the Interior; (b) at the election of the lessee to drill and produce other wells: *Provided*, That the right to drill and produce such other wells shall be subject to any system of well spacing or production allotments authorized and approved under the applicable law or regulations, approved by the Secretary of the Interior and affecting the field or area in which the leased lands are situated; and (c) if the lessee elects not to drill and produce such other wells for any period the Secretary of the Interior may, within 10 days after due notice in writing, either require the drilling and production of such wells to the number necessary, in his opinion, to insure reasonable diligence in the development and operation of the property, or may in lieu of such additional diligent drilling and production require the payment on and after the first anniversary date of the lease of not to exceed $1 per acre per annum, which sum shall be in addition to any rental or royalty herein specified.

§ 227.24 Penalties.

Failure of the lessee to comply with any provisions of the lease, of the operating regulations, of the regulations in this part, orders of the superintendent or his representative, or of the orders of the supervisor or his representative, shall subject the lessee to a penalty of not more than $500 per day for each day the terms of the lease, the regulations, or such orders are violated: *Provided*, That the lessee shall be entitled to notice, and hearing within 30 days after such notice, with respect to the terms of the lease, regulations, or orders violated, which hearing shall be held by the supervisor, whose findings shall be conclusive unless an appeal be taken to the Secretary of the Interior within 30 days after notice of the supervisor's decision, and the decision of the Secretary of the Interior upon appeal shall be conclusive.

§ 227.25 Inspection of premises, books and accounts.

Lessee shall agree to allow the lessor and his agents or any authorized representative of the Interior Department to enter, from time to time, upon and into all parts of the leased premises for the purposes of inspection and shall further agree to keep a full and correct account of all operations and make reports thereof, as required by the applicable regulations of the Department; and their books and records, showing manner of operations and persons interested, shall be open at all times for examination of such officers of the Department as shall be instructed in writing by the Secretary of the Interior or authorized by regulations, to make such examination.

§ 227.26 Assignments and overriding royalties.

(a) Leases, or any interest therein, may be assigned or transferred only with the approval of the Secretary of the Interior, and to procure such approval the assignee must be qualified to hold such lease under existing rules and regulations, and shall furnish a satisfactory bond for the faithful performance of the covenants and conditions thereof. No lease or any interest therein, or the use of such lease, shall be assigned, sublet, or transferred directly or indirectly, by working or drilling contract, or otherwise without the consent of the Secretary of the Interior. Assignments of leases shall be filed with the superintendent within 20 days after the date of execution.

(b) An agreement creating overriding royalties or payments out of production under this part shall be subject to the provisions of § 211.26(d) of this chapter, or as hereafter amended.

[22 FR 10622, Dec. 24, 1957, as amended at 23 FR 9759, Dec. 18, 1958. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 227.27 Stipulations.

The lessee under any lease heretofore executed may be stipulation (Form 5–154i), with the consent of the lessor, make such lease subject to all the terms, conditions, and provisions contained in the lease form currently in use. Stipulations shall be filed with the superintendent within 20 days after the date of execution.

§ 227.28 Cancellations.

Leases shall be irrevocable except for breach of the terms and conditions of the same and may be forfeited and cancelled by an appropriate proceeding in the U.S. District Court for the District of Wyoming whenever the lessee fails to comply with their terms and conditions; the lessee may, on approval of the Secretary of the Interior, surrender a lease or any part of it:

(a) That he make application for cancellation to the superintendent having jurisdiction over the land.

(b) That he pay a surrender fee of $1 at the time the application is made.

(c) That he pay all royalties and rentals due to the date of such application.

(d) That he make a satisfactory showing that full provision has been made for conservation and protection of the property and that all wells, drilled on the portion of the lease surrendered, have been properly abandoned.

(e) If the lease has been recorded, that he file, with his application, a recorded release of the acreage covered by the application.

(f) If the application is for the cancellation of the entire lease or the entire undivided portion, that he surrender the lease: *Provided*, That where the application is made by an assignee to whom no copy of the lease was delivered, he will be required to surrender only his copy of the assignment.

(g) If the lease (or portion being surrendered or canceled) is owned in undivided interests by more than one party, then all parties shall join in the application for cancellation.

(h) That all required fees and papers must be in the mail or received on or before the date upon which rents and royalties become due, in order for the lessee and his surety to be relieved from liability for the payment of such royalties and rentals.

(i) In the event oil or gas is being drained from the leased premises by wells not covered by the lease; the lease, or any part of it may be surrendered, only on such terms and conditions as the Secretary of the Interior

may determine to be reasonable and equitable.

§ 227.29 Fees.

Unless otherwise authorized by the Secretary of the Interior or his authorized representative, each lease, sublease, or assignment shall be accompanied at the time of filing by a fee of $10.

(Sec. 1, 41 Stat. 415, as amended; 25 U.S.C. 413)

[24 FR 7949, Oct. 2, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 227.30 Forms.

The provisions of § 211.30 of this chapter, or as hereafter amended are applicable to this part.

[24 FR 7949, Oct. 2, 1959. Redesignated at 47 FR 13327, Mar. 30, 1982]

SUBCHAPTER J—FISH AND WILDLIFE

PART 241—INDIAN FISHING IN ALASKA

Sec.
241.1 Purpose.
241.2 Annette Islands Reserve; definition; exclusive fishery; licenses.
241.3 Commercial fishing, Annette Islands Reserve.
241.4 Subsistence and sport fishing, Annette Islands Reserve.
241.5 Commercial fishing, Karluk Indian Reservation.
241.6 Enforcement; violation of regulations; corrective action; penalties; closure of restrictions, Annette Islands Reserve.

AUTHORITY: 25 U.S.C. 2, 9; 43 U.S.C. 1457; sec. 15, 26 Stat. 1101, 48 U.S.C. 358; Presidential Proclamation, Apr. 28, 1916, 39 Stat. 1777; sec. 2, 49 Stat. 1250, 48 U.S.C. 358a; sec. 4, 72 Stat. 339, as amended 73 Stat. 141.

SOURCE: 28 FR 7183, July 12, 1963, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 241.1 Purpose.

The purpose of the regulations in this part is to regulate all fishing within the Annette Islands Reserve and to regulate Indian and other native commercial fishing in the Karluk Indian Reservation, but they shall not be construed to limit any rights of Indians or other natives of Alaska not specifically covered hereby.

§ 241.2 Annette Islands Reserve; definition; exclusive fishery; licenses.

(a) *Definition*. The Annette Islands Reserve is defined as the Annette Islands in Alaska, as set apart as a reservation by section 15 of the Act of March 3, 1891 (26 Stat. 1101, 48 U.S.C. sec. 358), and including the area identified in the Presidential Proclamation of April 28, 1916 (39 Stat. 1777), as the waters within three thousand feet from the shore lines at mean low tide of Annette Island, Ham Island, Walker Island, Lewis Island, Spire Island, Hemlock Island, and adjacent rocks and islets, located within the broken line upon the diagram attached to and made a part of said Proclamation; and also the bays of said islands, rocks, and islets.

(b) *Exclusive fishery*. The Annette Islands Reserve is declared to be exclusively reserved for fishing by the members of the Metlakatla Indian Community and such other Alaskan Natives as have joined or may join them in residence on the aforementioned islands, and any other person fishing therein without authority or permission of the Metlakatla Indian Community shall be subject to prosecution under the provisions of section 2 of the Act of July 2, 1960 (74 Stat. 469, 18 U.S.C. sec. 1165).

(c) *Licenses*. Members of the Metlakatla Indian Community, and such other Alaskan Natives as have joined them or may join them in residence on the aforementioned islands, shall not be required to obtain a license or permit from the State of Alaska to engage in fishing in the waters of the Annette Islands Reserve.

§ 241.3 Commercial fishing, Annette Islands Reserve.

(a) *Definition*. Commercial fishing is the taking, fishing for, or possession of fish, shellfish, or other fishery resources with the intent of disposing of such fish, shellfish, or other fishery resources or parts thereof for profit, or by sale, barter, trade, or in commercial channels.

(b) *Trap fishing sites; number and location*. During 1963, and until the Secretary of the Interior or his duly authorized representative determines otherwise, the Metlakatla Indian Community is permitted to operate not more than one trap per site for salmon fishing at any four of the following sites in the Annette Islands Reserve, Alaska:

(1) Annette Island at 55 degrees 15 minutes 09 seconds north latitude, 131 degrees 36 minutes 00 seconds west longitude.

(2) Annette Island at 55 degrees 12 minutes 52 seconds north latitude, 131 degrees 36 minutes 10 seconds west longitude.

(3) Annette Island at 55 degrees 02 minutes 47 seconds north latitude, 131 degrees 38 minutes 53 seconds west longitude.

(4) Annette Island at 55 degrees 05 minutes 41 seconds north latitude, 131 degrees 36 minutes 39 seconds west longitude.

(5) Annette Island at 55 degrees 01 minute 54 seconds north latitude, 131 degrees 38 minutes 36 seconds west longitude.

(6) Annette Island at 55 degrees 00 minutes 45 seconds north latitude, 131 degrees 38 minutes 30 seconds west longitude.

(7) Annette Island at 54 degrees 59 minutes 41 seconds north latitude, 131 degrees 36 minutes 48 seconds west longitude.

(8) Ham Island at 55 degrees 10 minutes 13 seconds north latitude, 131 degrees 19 minutes 31 seconds west longitude.

(c) *Trap fishing season.* Fishing for salmon with traps operated by the Metlakatla Indian Community is permitted only at such times as commercial salmon fishing with purse seines is permitted by order or regulation of the Alaska Board of Fish and Game for Commercial Fishing in any part of the following area: from the point at which meridian 132°17′30″, thence due east along said parallel to longitude 130°49′15″, then due south along said meridian to the point at which it intersects with the United States-Canadian boundary, thence due west along said boundary to the point of beginning, provided, however, that the Secretary or his duly authorized representative may upon request by the Metlakatla Indian Community, authorize fishing for salmon with traps, at such other times as he shall prescribe, which authorization shall be based upon the following criteria:

(1) Number of fish required for spawning escapement and any other requirements reasonable and necessary for conservation;

(2) Fair and equitable sharing of the salmon resource with other user groups fishing in State waters under State law and within the State fisheries management system; and

(3) The federal purpose in the establishment and maintenance of the Metlakatla Indian Reservation.

(d) *Size, construction and closure of fish traps*—(1) *Size.* When any part of a trap is in a greater depth of water than 100 feet, the trap as measured from shore at mean high tide to the outer face of the pot shall not extend beyond 900 feet.

(2) *Construction.* Poles shall be permanently secured to the webbing at each side of the mouth of the pot tunnel and shall extend from the tunnel floor to a height at least four feet above the water. A draw line shall be reeved through the lower end of both poles and the upper end of one.

(3) *Method of closing.* The tunnel walls shall be overlapped as far as possible across the pot gap and the draw line shall be pulled tight and both secured so as to completely close the tunnel. In addition, 25 feet of the webbing of the heart on each side next to the pot shall be lifted or lowered in such manner as to permit the free passage of fish.

(e) *Other forms of commercial fishing.* All commercial fishing, other than with traps, shall be in accordance with the season and gear restrictions established by rule or regulation by the Alaska Board of Fish and Game for Commercial Fishing in any part of the previously defined area; provided, however, that the Secretary or his duly authorized representative may, upon request by the Metlakatla Indian Community authorize such other commercial fishing at such times as he shall prescribe, which authorization shall be based upon the following criteria:

(1) Number of fish required for spawning escapement and any other requirements reasonable and necessary for conservation;

(2) Fair and equitable sharing of the fishery resource with other user groups fishing in State waters under State law and within the State fisheries management system; and

(3) The Federal purpose in the establishment and maintenance of the Metlakatla Indian Reservation.

[28 FR 7183, July 12, 1963; 28 FR 12273, Nov. 20, 1963, as amended at 40 FR 24184, June 5, 1975. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 241.4 Subsistence and sport fishing, Annette Islands Reserve.

(a) *Definitions.* (1) Subsistence fishing is the taking or attempting to take any species of fish or shellfish for purposes other than sale or barter, except

as provided for in paragraph (a)(2) of this section.

(2) Sport fishing is the taking or attempting to take for personal use, and not for sale or barter, any fresh water, marine, or anadromous fish by hook and line or by such means as defined by regulation or statute of the State of Alaska.

(b) *Restrictions.* Subsistence fishing within the Annette Islands Reserve shall be in accordance with the season, gear and bag restrictions established by rule or regulation of the Alaska Board of Fish and Game for Commercial Fishing in Fishing District No. 1. Sport fishing within the Annette Islands Reserve shall be in accordance with the season, gear and bag restrictions established by rule or regulation for Southeastern Alaska by the Alaska Board of Fish and Game. Both subsistence and sport fishing shall also be in accordance with such ordinances as may be adopted by the Council of the Metlakatla Indian Community and approved by the Secretary of the Interior.

§ 241.5 Commercial fishing, Karluk Indian Reservation.

(a) *Definition.* The Karluk Indian Reservation includes all waters extending 3,000 feet from the shore at mean low tide on Kodiak Island beginning at the end of a point of land on the shore of Shelikof Strait about 1¼ miles east of Rocky Point and in approximate latitude 57 degrees 39 minutes 40 seconds N., longitude 154 degrees 12 minutes 20 seconds W.; thence south approximately 8 miles to latitude 57 degrees 32 minutes 30 seconds N.; thence west approximately 12½ miles to the confluence of the north shore of Sturgeon River with the east shore of Shelikof Strait; thence northeasterly following the easterly shore of Shelikof Strait to the place of beginning, containing approximately 35,200 acres.

(b) *Who may fish; licenses.* The waters of the Karluk Indian Reservation shall be open to commercial fishing by bona fide native inhabitants of the native village of Karluk and vicinity, and to other persons insofar as the fishing activities of the latter do not restrict or interfere with fishing by such natives. Such natives shall not be required to obtain a license to engage in commercial fishing in the waters of the Karluk Indian Reservation.

(c) *Salmon fishing; restrictions.* Commercial fishing for salmon by native inhabitants of the native village of Karluk and vicinity in the waters of the Karluk Indian Reservation shall be in accordance with the seasonal and gear restrictions of the rules and regulations of the Alaska Board of Fish and Game for Commercial Fishing in the fishing district embracing the Karluk Indian Reservation except that:

(1) Beach seines up to 250 fathoms in length may be used northeast of Cape Karluk; and

(2) Prior to July 1, fishing shall be permitted to within 100 yards of the Karluk River where it breaks through the Karluk Spit into Shelikof Strait.

§ 241.6 Enforcement; violation of regulations; corrective action; penalties; closure of restrictions, Annette Islands Reserve.

(a) *Enforcement.* The regulations in this part shall be enforced by any duly authorized representative of the Secretary of the Interior. Any fish trap, vessel, gear, processing establishment or other operation or equipment subject to the regulations of this part shall be available for inspection at all times by such representative.

(b) *Violation of regulations.* Whenever any duly authorized enforcement representative of the Secretary of the Interior has reasonable cause to believe any violation of the regulations of this part relating to fish traps has occurred, he shall direct immediate closure of the trap involved and shall affix an appropriate seal thereto to prevent further fishing. The matter shall be reported without delay to the Area Director, Bureau of Indian Affairs, who shall thereupon report and recommend to the Secretary of the Interior appropriate corrective action.

(c) *Corrective action.* Any violation of the regulations of this part relating to fish traps shall be ground for the temporary or permanent closure, as the Secretary of the Interior may determine, of any or all traps authorized by § 241.3(a), or the withdrawal and rescission of the right to fish for salmon with traps at any or all sites authorized thereby.

(d) *Penalties.* Any person who violates any of the regulations of this part shall be subject to prosecution under section 2 of the Act of July 12, 1960 (74 Stat. 469, 18 U.S.C. sec. 1165), which provides as follows:

> Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, shall be fined not more than $200 or imprisoned not more than ninety days, or both, and all game, fish, and peltries in his possession shall be forfeited.

(e) *Closure or restriction, Annette Islands Reserve.* The Commissioner of Indian Affairs, after consultation with officials of the Metlakatla Indian Community, is authorized and directed, upon a determination of the necessity to promote sound conversation practices, to restrict or close to commercial, subsistence or sport fishing any portion of the Annette Islands Reserve by notice given appropriate local publicity.

[28 FR 7183, July 12, 1963, as amended at 30 FR 5742, Apr. 23, 1965. Redesignated at 47 FR 13327, Mar. 30, 1982]

PART 242—COMMERCIAL FISHING ON RED LAKE INDIAN RESERVATION

Sec.
242.1 Definitions.
242.2 Authority to engage in commercial fishing.
242.3 Authority to operate.
242.4 Fishing.
242.5 Disposition of unmarketable fish.
242.6 Spawning season.
242.7 Suspension.
242.8 Penalty.
242.9 Quotas.
242.10 Fishing equipment limitations.
242.11 Royalty.
242.12 Authority to lease.

AUTHORITY: 25 U.S.C. 2; 5 U.S.C. 301.

SOURCE: 25 FR 7784, Aug. 16, 1960, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§242.1 Definitions.

As used in this part:

(a) ''Secretary'' means the Secretary of the Interior or his authorized representative.

(b) ''Council'' means the General Council of the Red Lake Band of the Chippewa Indians as recognized by the Secretary of the Interior.

(c) ''Association'' means the Red Lake Fisheries Association, incorporated under the laws of the State of Minnesota, and whose articles of incorporation and bylaws and any amendments thereto have been approved by the Council and the Secretary of the Interior.

(d) ''Member of Association'' means as defined in the Association by-laws.

(e) ''Commercial fishing'' means the catching of any fish for sale directly or indirectly to others than Indians on the reservations or licensed traders on the reservation for resale to Indians.

§242.2 Authority to engage in commercial fishing.

No person shall engage in commercial fishing in the waters of the Red Lakes on the Red Lake Indian Reservation in the State of Minnesota except the Red Lake Fisheries Association, a corporation organized and incorporated under the laws of Minnesota, and its members, and then only in accordance with the regulations in this part. The authority hereby granted to the Association and its members to engage in commercial fishing may, at any time, be canceled and withdrawn and these regulations may be modified and amended.

§242.3 Authority to operate.

The association may conduct commercial fishing operations on the reservation under authority of its articles of incorporation and by-laws only in accordance with the regulations in this part.

§242.4 Fishing.

(a) Enrolled members of the Red Lake Band of Chippewa Indians may take fish at any time except as prohibited by §242.6 from waters of the Red Lakes on the Red Lake Indian Reservation for their own use and for sale to:

(1) Other Indians on the reservation and

(2) Licensed traders on the reservation for resale to Indians.

(b) Fish may be taken for commercial purposes only by the Association through members of the Association in residence on the reservation during the fishing season which shall be May 15 to November 15 inclusive. All fish taken for such purposes shall be marketed through the Association.

(c) In connection with commercial fishing, Association members fishermen may be assisted only by Indians who are members of the Red Lake Band.

§ 242.5 Disposition of unmarketable fish.

All unmarketable live fish taken under authority of these regulations must be returned to the water, and all unmarketable dead fish taken must be buried by the person taking the same.

§ 242.6 Spawning season.

Walleye and northern pike (or pickerel) shall not be taken during their spawning season except for propagation purposes.

§ 242.7 Suspension.

All commercial fishing operations may be suspended by order of the Secretary at any time.

§ 242.8 Penalty.

Any Indian violating the provisions of §§ 242.4 and 242.6 shall forfeit his right to take fish for any purpose for a period of three months.

§ 242.9 Quotas.

The Secretary may set such commercial quotas as he may find desirable, based on available biological and other information, on the amount of fish which may be taken under authority of the regulations in this part in any one season. Until otherwise determined by the Secretary, not more than 650,000 pounds of walleyes may be taken in any one fishing season.

§ 242.10 Fishing equipment limitations.

(a) Any variety of fish may be taken by enrolled members of the Band from any waters on the reservation by hook and line, and from Upper and Lower Red Lakes by gill net or entrapment gear for noncommercial use only.

(b) For commercial fishing each member of the Association shall be limited to eight gill nets of 300 feet in length and six feet in depth, of which not to exceed six of such nets may be of nylon and other synthetic material.

(c) Gill nets for taking pike shall have a mesh of not less that 3½ inches extension measure.

(d) Gill nets for taking whitefish shall have a mesh of not less than 5½ inches extension measure.

(e) Entrapment gear may only be used by members of the Association for taking fish of any variety for commercial purposes or propagation, in accordance with such specifications and directions as the manager of the Association may provide.

(f) All nets used in Red Lake Reservation waters must be marked with appropriate tags to be furnished by the Association.

§ 242.11 Royalty.

The Association shall pay five percent of the gross receipts from the sale of fish by the Association to the designated collection officer of the Bureau of Indian Affairs, which shall be deposited to the credit of the Band in the Treasury of the United States.

§ 242.12 Authority to lease.

The Band, with the approval of the Secretary, may execute a lease or permit on its fisheries plant and hatchery at Redby, Minnesota, to the Association.

PART 243—REINDEER IN ALASKA

DECLARATIONS OF OWNERSHIP

Sec.
243.1 Agent.
243.2 Filing of form.
243.3 Receipt of form.

AUTHORITY: Sec. 12, 50 Stat. 902; 48 U.S.C. 250k. Interpret or apply sec. 3, 50 Stat. 900; 48 U.S.C. 250b.

SOURCE: 22 FR 10543, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

DECLARATIONS OF OWNERSHIP

§ 243.1 Agent.

The General Reindeer Supervisor at Nome, Alaska, is hereby designated as the duly authorized agent of the Secretary of the Interior, with whom all declarations of reindeer ownership required by the act of September 1, 1937 (50 Stat. 900; 48 U.S.C. 250-250p), must be filed within the time limits specified in the act.

§ 243.2 Filing of form.

Pursuant to the provisions of section 3 of the act, declarations of ownership of reindeer in Alaska should be made by claimants upon the prescribed form. This form should be executed in quadruplicate. All four copies should be submitted in person or by mail to the General Reindeer Supervisor, Nome, Alaska, who has been designated as the duly authorized agent of the Secretary of the Interior pursuant to section 3 of the aforementioned act. Envelopes contining declarations of ownership of reindeer which are mailed to said agent must bear postmarks not later than midnight of September 1, 1938, in order to meet the requirements of the law. All declarations submitted in person by the owner, or his representative, must be filed with said agent at his office at Nome, Alaska, on or before 5 o'clock p.m., September 1, 1938.

NOTE: Copies of the form mentioned may be obtained from the General Reindeer Supervisor, Nome, Alaska.

§ 243.3 Receipt of form.

Upon receipt of each person's declaration of ownership of reindeer in Alaska, the General Reindeer Supervisor shall sign the receipt thereof in the proper place in the form, and shall submit two copies of the declaration to the Commissioner of Indian Affairs, retain one copy in his record, and return one copy to the claimant. All declarations of ownership of reindeer in Alaska which are included in the records of the office of the General Reindeer Supervisor shall be kept open to public inspection in Alaska in accordance with section 3 of said act.

PART 248—USE OF COLUMBIA RIVER INDIAN IN-LIEU FISHING SITES

Sec.
248.1 Fishing sites subject to regulation.
248.2 Persons eligible to use sites.
248.3 Identification of eligible users.
248.4 Applicability of laws and regulations.
248.5 Damage to Government-owned property.
248.6 Structures.
248.7 Liability for condition and use of structures.
248.8 Abandoned property.
248.9 Camping and use restrictions.
248.10 Appeals from administrative actions.

AUTHORITY: 5 U.S.C. 301; 25 U.S.C. 2, 9.

SOURCE: 32 FR 3945, Mar. 10, 1967, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 248.1 Fishing sites subject to regulation.

Use of any of the lands acquired by the Secretary of War and transferred to the Secretary of the Interior pursuant to the Act of March 2, 1945 (59 Stat. 22), as amended (hereinafter called ''in lieu fishing sites'' or ''sites'') to replace Indian fishing grounds submerged or destroyed as a result of the construction of the Bonneville Dam shall be subject to the following rules and regulations. The Area Director, Portland Area Office, Bureau of Indian Affairs (hereinafter called ''Area Director''), may suspend or withdraw the privileges of access to or use of any or all the sites for any violation of the regulations in this part or of any rules issued pursuant to the regulations in this part.

§ 248.2 Persons eligible to use sites.

The in-lieu fishing sites are for the benefit of the Yakima, Umatilla, and Warm Springs Indian Tribes, and such other Columbia River Indians, if any, who had treaty fishing rights at locations inundated or destroyed by Bonneville Dam, to be used is accordance with treaty rights. The use of the sites is restricted to such Indians; however, this shall not preclude the use of camping areas on the sites by the families of such Indians.

§ 248.3 Identification of eligible users.

For the purpose of identification of the persons entitled to use the sites,

each eligible Indian shall, when using said sites, have in his possession an identification card issued by his tribe identifying him as a member of that tribe. The Area Director shall issue identification cards to such other Columbia River Indians, if any, as may be eligible to use the sites. Any individual using the sites shall exhibit the identification upon request of authorized Federal, State or local officials.

§ 248.4 Applicability of laws and regulations.

No Indian shall use any of the sites for any activity that is contrary to the provisions of any applicable law or regulation of his tribe or contrary to any applicable State or Federal law or regulation. The Area Director may in his discretion suspend or withdraw privileges for future access to or use of the sites for violation of such laws and regulations: *Provided*, That, nothing contained in the regulations in this part is intended or shall be construed as limiting or affecting any treaty rights of any tribe nor as subjecting any Indian properly exercising tribal treaty rights to State fishing laws or regulations which are not compatible with such rights.

§ 248.5 Damage to Government-owned property.

Anyone committing any act of depredation, destruction, theft, or misuse of the land, buildings, fences, signs, or other structures which are the property of the United States shall be subject to prosecution under applicable Federal or State law.

§ 248.6 Structures.

Dwellings, camping facilities, and other structures such as fish drying facilities and fishing platforms may be erected, placed, or maintained on the sites for use in the conduct of treaty fishing and related activities. Sites must be used in a manner that conforms to the health, sanitation, and safety requirements of the State or local law, or, in the absence of appropriate State or local laws, to the health, sanitation, and safety recommendations of the U.S. Public Health Service. The privileges or right of access to or use of the sites of any individual may be suspended or withdrawn, in the discretion of the Area Director, when such individual having violated such health, sanitation, and safety requirements repeats such violation after having been given notice to cease and desist therefrom.

[59 FR 16757, Apr. 7, 1994]

§ 248.7 Liability for condition and use of structures.

Any private structures including drying sheds, tents, tepees, or fishing platforms erected, placed, or maintained on the sites are the sole responsibility of their owners, and all use of such structures shall be at the user's or owner's sole responsibility and risk. Neither the United States nor any officer or employee thereof warrants, makes any representation, or is responsible for the safety or condition of any such structure.

[34 FR 2248, Feb. 15, 1969. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 248.8 Abandoned property.

No vehicle, trailer, boat, or other personal property shall be abandoned on the sites. Property abandoned in violation of the regulations in this part may be removed without prior notice to the owner and may be disposed of at the owner's expense as determined by the Area Director.

§ 248.9 Camping and use restrictions.

All camping, picnicking, use of alcoholic beverages, setting or use of fires, use of the sites for cleaning of fish, the deposit of any garbage, paper, cans, bottles, or rubbish of any kind, or use of the sites for any commercial activity (including commercial purchase of fish) shall be subject to such prohibitions, restrictions, or other regulations as the Area Director may prescribe and cause to be posted on the site or sites to which said regulations are applicable; provided that no fee may be charged to any Indian or member of his family for any such use.

§ 248.10 Appeals from administrative actions.

Any decision made by the Area Director under this part 248 shall be subject to appeal to the Commissioner of

Indian Affairs, and any decision on the Commissioner of Indian Affairs on such an appeal may be appealed to the Secretary of the Interior in accordance with part 2 of this chapter.

PART 249—OFF-RESERVATION TREATY FISHING

Subpart A—General Provisions

Sec.
249.1 Purpose.
249.2 Area regulations.
249.3 Identification cards.
249.4 Identification of fishing equipment.
249.5 Use of unauthorized helpers or agents.
249.6 Enforcement and penalties.
249.7 Savings provisions.

AUTHORITY: 25 U.S.C. 2 and 9; 5 U.S.C. 301, unless otherwise noted.

SOURCE: 32 FR 10434, July 15, 1967, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

Subpart A—General Provisions

§ 249.1 Purpose.

(a) The purposes of these regulations (part 249) are:

(1) To assist in protecting the off-reservation nonexclusive fishing rights which are secured to certain Indian tribes by their treaties with the United States;

(2) To promote the proper management, conservation and protection of fisheries resources which are subject to such treaties of the United States;

(3) To provide for determination of restrictions on the manner of exercising nonexclusive fishing privileges under rights secured to Indian tribes by such treaties of the United States necessary for conservation of the fisheries resources;

(4) To assist in the orderly administration of Indian Affairs;

(5) To encourage consultation and cooperation between the states and Indian tribes in the management and improvement of fisheries resources affected by such treaties;

(6) To assist the states in enforcing their laws and regulations for the management and conservation of fisheries resources in a manner compatible with the treaties of the United States which are applicable to such resources.

(b) The conservation regulations of this part 249 are found to be necessary to assure that the nonexclusive rights secured to certain Indian tribes by treaties of the United States to fish at usual and accustomed places outside the boundaries of an Indian reservation shall be protected and preserved for the benefit of present and future members of such tribes in a manner consistent with the nonexclusive character of such rights. Any exercise of an Indian off-reservation treaty fishing right shall be in accordance with this part and any applicable area regulations issued hereunder.

[32 FR 10434, July 15, 1967. Redesignated at 47 FR 13327, Mar. 30, 1982; 48 FR 13414, Mar. 31, 1983]

§ 249.2 Area regulations.

(a) The Secretary of the Interior may upon request of an Indian tribe, request of a State Governor, or upon his own motion, and upon finding that Federal regulation of Indian fishing in any waters in which Indians have a treaty-secured nonexclusive fishing right is necessary to assure the conservation and wise utilization of the fishery resources for the present and future use and enjoyment of the Indians and other persons entitled thereto, promulgate regulations to govern the exercise of such treaty-secured fishing right in such waters for the purpose of preventing, in conjunction with appropriate State conservation laws and regulations governing fishing by persons not fishing under treaty rights, the deterioration of the fishery resources.

(b) In formulating such regulations the Secretary of the Interior may incorporate such State laws or regulations, or such tribal regulations as have been approved by the Commissioner of Indian Affairs, as he finds to be consistent with the Indians' rights under the Treaty and the conservation of the fishery resources.

(c) Before promulgating such regulations the Secretary of the Interior will seek the views of the affected Indian tribes, of the fish or game management agency or agencies of any affected State, and of other interested persons. Except in emergencies where the Secretary finds that the exigencies require the promulgation of regulations to be

effective immediately, a notice of proposed rule making will be published in the FEDERAL REGISTER in accordance with 5 U.S.C. 553 to afford an opportunity to submit comments and information, at such times and in such manner as may be specified in the notice. In the event of the emergency promulgation of regulations, interested persons will be afforded, as soon as possible, an opportunity to request amendment or revocation thereof.

(d) Any regulations issued pursuant to this section shall contain provisions for invoking emergency closures or restrictions or the relaxation thereof at the field level when necessary or appropriate to meet conditions not foreseeable at the time the regulations were issued.

(e) Regulations issued pursuant to this § 249.2 may include such requirements for recording and reporting catch statistics as the appropriate state fish and game agencies or the Secretary of the Interior deem necessary for effective fishery management.

§ 249.3 Identification cards.

(a) The Commissioner of Indian Affairs shall arrange for the issuance of an appropriate identification card to any Indian entitled thereto as prima facie evidence that the authorized holder thereof is entitled to exercise the fishing rights secured by the treaty designated thereon. The Commissioner may cause a federal card to be issued for this purpose or may authorize the issuance of cards by proper tribal authorities: *Provided,* That any such tribal cards shall be countersigned by an authorized officer of the Bureau of Indian Affairs certifying that the person named on the card is a member of the tribe issuing such card and that said tribe is recognized by the Bureau of Indian Affairs as having fishing rights under the treaty specified on such card. Copies of the form of any identification card authorized pursuant to this section and a list of the authorized Bureau of Indian Affairs issuing or countersigning officials shall be furnished to the fisheries management and enforcement agencies of any State in which such fishing rights may be exercised.

(b) No such card shall be issued to any Indian who is not on the official membership roll of the tribe which has been approved by the Secretary of the Interior. *Provided,* That until further notice, a temporary card may be issued to any member of a tribe not having an approved current membership roll who submits evidence of his/her entitlement thereto satisfactory to the issuing officer and, in the case of a tribally issued card, to the countersigning officer. Any Indian claiming to have been wrongfully denied a card may appeal the decision in accordance with part 2 of this chapter.

(c) No person shall be issued an identification card on the basis of membership in more than one tribe at any one time.

(d) Each card shall state the name, address, tribal affiliation and enrollment number (if any) of the holder, identify the treaty under which the holder is entitled to fishing rights, contain such additional personal identification data as is required on fishing licenses issued under the law of the State or States within which it is used, and be signed by the issuing officer and by the holder.

(e) No charge or fee of any kind shall be imposed by the Commissioner of Indian Affairs for the issuance of an identification card hereunder: *Provided,* That this shall not prevent any Indian tribe from imposing any fee or tax which it may otherwise be authorized to impose upon the exercise of any tribal fishing right.

(f) All cards issued by the Commisssioner of Indian Affairs pursuant to this part 249 shall be and remain the property of the United States and may be retaken by any Federal, State, or tribal enforcement officer from any unauthorized holder. Any card so retaken shall be immediately forwarded to the officer who issued it.

(g) The failure of any person who claims to be entitled to the benefits of a treaty fishing right to have such a card in his immediate personal possession while fishing or engaging in other activity in the claimed exercise of such right to display it upon request to any Federal, State, or tribal enforcement officer shall be prima facie evidence

that the person is not entitled to exercise an Indian fishing right under a treaty of the United States.

(h) No person shall allow any use of his identification card by any other person.

(5 U.S.C. 301; R.S. 463 and 465)

[32 FR 10434, July 15, 1967, as amended at 46 FR 4873, Jan. 19, 1981. Redesignated at 47 FR 13327, Mar. 30, 1982, as amended at 48 FR 1052, Jan. 10, 1983]

§249.4 Identification of fishing equipment.

All fishing gear or other equipment used in the exercise of any off-reservation treaty fishing right shall be marked in such manner as shall be prescribed in regulations issued pursuant to §249.2 hereof to disclose the identity of its owner or user. In the absence of proof to the contrary, any fishing gear which is not so marked or labeled shall be presumed not to be used in the exercise of an off-reservation treaty fishing right and shall be subject to control or seizure under State law.

§249.5 Use of unauthorized helpers or agents.

No Indian shall, while exercising off-reservations treaty-secured fishing rights, permit any person 12 years of age or older other than the authorized holder of a currently valid identification card issued pursuant to this part 249 to fish for him, assist him in fishing, or use any gear of fishing location identified as his gear or location pursuant to this part 249.

§249.6 Enforcement and penalties.

(a) Any Indian tribe with a tribal court may confer jurisdiction upon such court to punish violations by its members of this part 249 or of the area regulations issued pursuant thereto. Jurisdiction is hereby conferred upon each Court of Indian Offenses established pursuant to part 11 of this chapter to punish such violations by members of tribes whose reservations are under the jurisdiction of such court. Courts of Indian Fishing Offenses may be created pursuant to part 11 of this chapter to punish such violations by members of any tribe or group of tribes for which there is otherwise no Court of Indian Offenses or tribal court with jurisdiction to enforce this part 249. The provisions of part 11 of this chapter shall apply to any such court with respect to the exercise of its jurisdiction to enforce this part 249. All jurisdiction conferred by this section shall apply without regard to any territorial limitations otherwise applicable to the jurisdiction of such court.

(b) Acceptance or use of an identification card issued pursuant to this part 249 or use of any fishing gear marked or identified pursuant thereto shall constitute an acknowledgment that the fishing done under such card or with such gear is in the claimed exercise of a tribal fishing right and is subject to the jurisdiction of the tribal court, Court of Indian Offenses, or Court of Indian Fishing Offenses. Except as may be otherwise provided by tribal regulations approved by or on behalf of the Secretary of the Interior, any person claiming to be exercising such tribal right and fishing in violation of the regulations contained in or issued under this part 249 may be punished by a fine of not to exceed $500, imprisonment of not to exceed 6 months, or both, and shall have his tribal fishing privileges suspended for not less than 5 days for any violation of this part 249 or of any area regulation issued pursuant thereto. The court shall impound the fishing rights identification card of any person for the period which the fishing privileges are suspended.

§249.7 Savings provisions.

Nothing in this part 249 shall be deemed to:

(a) Prohibit or restrict any persons from engaging in any fishing activity in any manner which is permitted under state law;

(b) Deprive any Indian tribe, band, or group of any right which may be secured it by any treaty or other law of the United States;

(c) Permit any Indian to exercise any tribal fishing right in any manner prohibited by any ordinance or regulation of his tribe;

(d) Enlarge the right, privilege, or immunity of any person to engage in any fishing activity beyond that granted or reserved by treaty with the United States;

(e) Exempt any person or any fishing gear, equipment, boat, vehicle, fish or fish products, or other property from the requirements of any law or regulation pertaining to safety, obstruction of navigable waters, national defense, security of public property, pollution, health and sanitation, or registration of boats or vehicles;

(f) Abrogate or modify the effect of any agreement affecting fishing practices entered into between any Indian tribe and the United States or any State or agency of either.

SUBCHAPTER K—HOUSING

PART 256—HOUSING IMPROVEMENT PROGRAM

Sec.
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APPENDIX A TO PART 256—SUMMARY OF SELECTION CRITERIA—POINT SCHEDULE
APPENDIX B TO PART 256—HIP SELECTION CRITERIA

AUTHORITY: 42 Stat. 208. (25 U.S.C. 13).

SOURCE: 57 FR 3105, Jan. 27, 1992, unless otherwise noted.

§256.1 Purpose.

The purpose of this part is to prescribe the terms and conditions under which assistance is given to Indians under the Housing Improvement Program (HIP).

§256.2 Definitions.

As used in this part 256:

Area Director means the Officer in charge of one of the Bureau of Indian Affairs Area Offices, or his/her authorized delegate.

Assistant Secretary means the Assistant Secretary—Indian Affairs, or his/her authorized representative.

Dilapidated means a state of disrepair.

Family means one or more persons maintaining a household.

Handicapped means legally blind; legally deaf; lack of or inability to use one or more limbs; chair or bed bedbound; inability to walk without crutches or walker; mental disability in an adult of a severity that requires a companion to aid in basic needs, such as dressing, preparing food, etc., or severe heart and/or respiratory problems preventing even minor exertion.

Indian means any person who is a member of any of those tribes listed in the FEDERAL REGISTER pursuant to 25 CFR part 83 as recognized by and receiving services from the Bureau of Indian Affairs.

Nonmember Indian means any person who is a member of a Federally recognized tribe living in another tribe's approved service area.

Ownership means having fee title, trust title, leasehold interest, use permit, indefinite assignment or other exclusive possessory interest. In the case of Alaska, the term also includes one who the Superintendent determines has a reasonable prospect of becoming an owner, in accordance with the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688).

Secretary means the Secretary of the Interior.

Service area means reservations (former reservations in Oklahoma), and allotments, restricted lands, Indian-owned fee lands (including lands owned by Corporations established pursuant to the Alaska Native Claims Settlement Act) within a geographical area designated by the tribe, and approved by the Area Director to which equitable services can be delivered.

Standard housing means a dwelling in a condition which is decent, safe, and sanitary so that it meets the following minimum standards;

(a) General construction conforms to applicable tribal, county, state or national codes and to appropriate building standards for the region.

(b) The heating system has the capacity to maintain a minimum temperature of 70 degrees in the dwelling during the coldest weather in the area. It must be safe to operate and maintain and deliver a uniform distribution of heat.

(c) The plumbing system includes a properly installed system of piping and fixtures.

(d) The electrical system includes wiring and equipment properly installed to safely supply electrical energy for lighting and for the operation of appliances.

(e) Occupants per dwelling do not exceed these limits:

(1) Two-bedroom dwelling: Up to four persons;

(2) Three-bedroom dwelling: Up to seven persons;

(3) Four-bedroom dwelling: Adequate for all but the very largest families.

(f) Bedroom size: The first bedroom must have at least 120 sq. ft. of floor space, additional bedrooms must have a minimum of 100 sq. ft. of floor space each.

(g) Two exceptions to standard housing will be permitted:

(1) Where one or more of the utilities are not available and there is no prospect of the utilities becoming available; and

(2) In areas of severe climate, house size may be reduced to meet applicable building standards of the region.

(g) The house site must be chosen so that access to utilities is most economical, the ingress and egress are adequate and aesthetics and proximity to school bus routes are considered.

Superintendent means the Officer in charge of the Agency or other local office of the Bureau of Indian Affairs.

Tribe means any Indian tribe, band, nation, rancheria, pueblo, colony, or community, including any Alaska Native village which is federally recognized as eligible by the United States Government for the special programs and services provided by the Secretary to Indian tribes because of their status as Indians.

§ 256.3 Policy.

(a) The Bureau of Indian Affairs' housing policy is consistent with the specific objectives of the national housing policy which declares that every American family should have the opportunity for a decent home and suitable living environment. To the maximum extent possible, tribes will be involved in the administration of the program.

(b) Every Indian, as defined in § 256.2 and eligible pursuant to § 256.6, is entitled to participate in this program irrespective of tribal affiliation, provided equitable services can be delivered to the geographic area within which they reside.

(c) The general distribution of HIP funds among tribes is based on a consistent, valid, and certified inventory of tribal housing needs, a viable work plan, and the tribe being in compliance with the intent of the program. Every effort will be made to use HIP funds in conjunction with other programs so that the result will be a greater amount of housing improvements than would otherwise be possible with the HIP funds alone. An example of this is the agreement with the Indian Health Services to provide water and sanitation facilities for HIP houses. In cases where training programs are used in conjunction with the HIP, funds are to be limited to the purchase of materials, and to the provision of inspection and skilled labor which are otherwise not available.

(d) Tribal allocation levels are determined on the basis of the HIP's responsibility of the total housing needs derived from the tribal inventories of need. The emphasis of the HIP will be on repair and renovation of existing housing while other federally-assisted programs are responsible for the bulk of the new house building effort. As such, the BIA's funding calculations are based on 90% of the repair need and up to 10% of the new construction need indicated by tribal housing inventories. (The exception is Alaska, where the percentage is 95% of repairs and 35% of new construction). The HIP may provide a grant for the financing of the construction of a limited amount of new standard housing when it is established that the applicant has been denied housing assistance from sources other than the HIP. Thus, each fiscal year, the BIA will allocate funds appropriated for HIP in proportion to the identified housing needs.

§ 256.4 Program categories.

The HIP will provide assistance in the following categories:

(a) *Repairs that will remain nonstandard.* Under this category:

(1) Financial assistance will be granted to finance repairs and additions to existing substandard housing needing replacement so that it is safe, more sanitary, and livable until such time as standard housing is available.

(2) The standard to be applied in deciding whether to provide assistance is improvement in the condition of the

house, i.e., improved livability or reduced health and safety hazards, even though it may be obvious that such an undertaking will not improve the house to the extent that it will meet the standard of decent, safe, and sanitary. Examples of the improvement that may be undertaken are: Weather tightening and the repair of doors, windows, roof, electrical wiring, plumbing, and chimney.

(3) The cumulative total expenditure of the HIP funds shall not exceed $2,500 for any one dwelling.

(4) The funds shall be granted and no restrictions on the use of the home may be imposed.

(b) *Repairs to housing that will become standard.* Under this category:

(1) Financial assistance will be granted to finance repairs, renovation and/or enlargement of existing structurally sound, but deteriorated dwellings which can economically be placed in a standard condition.

(2) Upon completion of work, the dwelling shall fit the definition of standard housing as defined in § 256.2.

(3) The total expenditure of the HIP Program Funds shall not exceed $20,000 for any one dwelling. (In the case of Alaska, reasonable, substantiated freight costs in accordance with Federal Property Management Regulation (FPMR) 101–40, not to exceed 100% of the material cost, may be added).

(4) Undertakings under this category are for applicants who are living in their own homes.

(5) The applicant must sign a written agreement that if he/she sells the house within five years following the date of completion of the repairs, the grant will be voided and the grantee will repay the full amount of the grant at the time of settlement to the Bureau of Indian Affairs.

(c) *Down payments.* Under this category:

(1) The HIP provides grants in order to make the applicant eligible to receive housing loans from tribal, Federal or other sources of credit. The applicant must establish that he/she has an inadequate income of limited financial resources to meet the full cost of the loan. Grants are only for standard housing.

(2) The grant shall not exceed the amount necessary to secure the loan plus the closing costs or ten percent (10%) of the purchase price of the house plus the closing costs or $5,000, whichever is less. (In the case of Alaska, the grant amount shall not exceed $6,000).

(3) The method of advancing the grant must ensure that the funds are used for the purpose intended. The applicant must sign a written agreement that if he/she sells the house within five years following the date of purchase, the grant is voided and the amount of the grant will be fully repaid by the grantee to the Bureau of Indian Affairs at time of settlement.

(d) *New housing.* Under this category:

(1) The HIP may provide a grant for the financing of the construction of a limited amount of new standard housing, either site-built or factory-built, when it is established that the applicant has been denied housing assistance from sources other than the HIP.

(2) The housing provided under this category must meet the housing standards of this part. Mobile units with an integral frame are specifically excluded.

(3) The total expenditure of HIP funds shall not exceed $45,000 for a dwelling and equipment. (In the case of Alaska, the total expenditure of funds shall not exceed $55,000, plus reasonable, substantiated freight costs in accordance with FPMR 101–40, not to exceed 100% of the materials cost). The occupant will be responsible for all maintenance of the completed dwelling and all utility fees, deposits or costs required for service.

(4) The applicant must have ownership of the land on which the house is located. In the case of a leasehold interest, it must be for not less than 25 years. The applicant must sign a written agreement that if he/she sells the house within the first ten years from the date of ownership, the grant is voided and the full amount of the HIP grant will be repaid by the grantee to the Bureau of Indian Affairs at time of settlement. Subsequent to the first ten years, if the grantee sells the house, he/she may retain 10% of the original grant amount per year beginning in the eleventh year, with the remaining amount to be repaid to the Bureau of

Indian Affairs. If the sale occurs twenty years or more after the date of ownership, no repayment of any part of the grant will be due the Bureau of Indian Affairs.

(5) Adequate fire insurance, where determined feasible, must be carried.

§ 256.5 HIP application.

Individuals wishing to participate in the Housing Improvement Program must fill out BIA Form 6407. Application forms may be obtained from tribes or the nearest Bureau of Indian Affairs Office. Completed applications should be submitted to tribes or the nearest BIA office, where applicable. Each application for assistance should be approved by the tribe. Nonmember Indians apply for assistance through the tribe in whose jurisdiction they reside.

§ 256.6 Eligibility.

(a) To establish eligibility for selection to receive a grant under § 256.7, an applicant must show that:

(1) The applicant is an Indian.

(2) The present housing of the applicant is substandard or inadequate in terms of capacity to meet the physical needs of the family.

(3) The applicant has been denied, or is ineligible for, housing assistance from sources other than the HIP.

(4) The economic resources of the applicant are inadequate or factors exist which make the applicant unable to obtain housing from other local, state or Federal sources. Applicants whose annual income exceeds the Department of Health and Human Services Poverty Income Guidelines by 225% or more shall be ineligible for HIP assistance on the basis of need. Determination of eligibility will be made on a case-by-case basis.

(5) The applicant for assistance under one of the categories in § 256.4 meets the ownership requirements given under that category.

(b) After October 1, 1986, an applicant may only receive assistance once under categories given in paragraph (b), (c), or (d) of § 256.4.

(c) The Department of Housing and Urban Development (HUD) financed houses under the administration of an Indian Housing Authority (IHA) will not be eligible for assistance until the end of the entire project indebtedness to the Federal Government.

§ 256.7 HIP selection criteria.

Once the eligibility requirements of § 256.6 are satisfied, development of priority lists of eligible applicants shall be accomplished by a ranking system based on six basic factors of need: Annual income, family size, overcrowded living conditions, age, handicap or disability, and HUD–IHA financed housing. Eligible applicants may receive points for any or all of these six factors. Priority will be given relative to the number of points received. Appendix A to this provides a summary of selection criteria.

(a) *Factor No. 1—Annual Household Income* (Up to 40 points available).

(1) The eligible applicant's total annual household income and other resources, if any, must be evaluated in order to determine priority in terms of degree of poverty. If an individual is counted as a family member for the purpose of determining Family Size (Factor No. 2), the annual income of that person must be included in the total annual household income on the HIP application. Examples of income which must be included are royalties and onetime income. A specific definition of the type of resources which must be included is set forth in 25 CFR part 20.

(2) In order to determine whether or not the applicant is entitled to points under Factor No. 1, it is necessary to compare the total combined annual household income against the Federal Poverty Income Guidelines which are published annually by the Department of Health and Human Services. The most current issue of the Guidelines published in the FEDERAL REGISTER by Health and Human Services (HHS) will be used during the selection process. A yardstick for determining applicant income priority is provided based upon 125% of the Poverty Income Guidelines. In addition, even greater point values are available for applicants whose annual income falls substantially (25% or more) below the poverty level. In order to facilitate calculations, a chart of the various income levels is provided

to each tribe annually upon publication of new revised Poverty Guidelines by HHS each year.

(b) *Factor No. 2—Family Size* (5 points per dependent child). A dependent child for purposes of this subsection is a person meeting the definition of ''child'' in 25 CFR part 20.

(c) *Factor No. 3—Overcrowded Living Conditions* (Up to 10 points possible).

(1) The definition of ''standard housing'' identifies the acceptable limits for family size per dwelling (see § 256.2). In order to earn points under Factor No. 3, the applicant family must exceed the limits for its dwelling established in § 256.2. A family is overcrowded if:

(i) Three or more persons occupy a one-bedroom dwelling.

(ii) Five or more persons occupy a two-bedroom dwelling.

(iii) Eight or more persons occupy a three-bedroom dwelling.

(2) Depending upon the circumstances and the degree of overcrowding, as well as the family structure, the committee reviewing HIP applications can award as little as 1 point, or as many as 10 points, for the overcrowding factor.

(3) The preceding overcrowded living description is not feasible in Alaska where, because of the unique climatic conditions, a dwelling is frequently not divided into the conventional room arrangement customary in the contiguous 48 states. Recommended guidelines for Alaska only are therefore based upon gross square feet per occupant, ranging from 2 to 10 points for Factor No. 3. (See appendix A to this part.)

(d) *Factor No. 4—Age*—(1) *Elderly couple.* (Up to 21 points per individual available.) Points are awarded based upon age, beginning at age 55, with a maximum of 21 points per elderly person available. Appendix B to this part is a schedule, by age, of the number of points to be awarded in this category. If an applicant family has an elderly relative who is a permanent household member, points are added to the application for this person.

(2) *Single, Elderly, Living Alone* (Up to 32 points). Special priority amounting to 150% of the Factor No. 4 standard schedule, as identified in paragraph (d)(1) of this section, is provided only for an elderly individual living alone and applying for a grant from HIP. An elderly widower/widow, age 70, living by him/herself plus 50% (8 points) adds up to a total of 24 points. In calculating allowable points using the schedule shown in appendix B, decimals should be eliminated by rounding to the next higher whole number.

(e) *Factor No. 5—Handicap or Disability* (Up to 20 points available per application).

(1) The many and varied degrees and types of disability present a complex ranking situation. A general definition of handicapped is provided as a guide. The selection committee evaluating HIP applications shall determine the number of points, up to the maximum of 20, merited by the applicant (or family member) based upon the degree of disability.

(2) Applicants should provide as much documentation as possible concerning the disabled person's condition. This could include a doctor's certification, Veteran's Administration determination, Social Security determination of degree of disability, or similar information which would assist the HIP committee in its point calculation.

(f) *Factor No. 6—HUD/IHA Financed Houses* (Deduct 30 points). A deduction of 30 points shall be applied to applicants who own HUD–IHA houses after the project indebtedness ends, as described in § 256.6(c). These houses represent new standard housing obtained with Federal housing assistance.

(g) *Tie Breaker.* If two applications are assigned the same number of points, two considerations will determine which application has priority.

(1) Tie Breaker No. 1—The applicant living in the most dilapidated conditions will receive priority.

(2) Tie Breaker No. 2—The family with the lower income will be served first.

§ 256.8 Program implementation.

The HIP will be implemented either by means of Pub. L. 93–638 contracts with the tribes, or administered directly by BIA, according to the HIP plans and priority of the tribe served. The HIP consists of two parts: Receipt, review, and screening of applications

submitted by Indians for housing assistance, determination of eligibility, and development of applicant priority lists; and design, construction, and repair/renovation of dwelling units. The implementation of HIP will be accomplished as follows:

(a) Develop and maintain a consistent and valid tribal inventory of needs.

(b) Select families and/or individuals for assistance. To accomplish this task:

(1) A current inventory of HIP applicants shall be developed.

(2) All HIP applications shall be received, reviewed, and screened.

(3) The BIA will ensure that HIP applications contain adequate information to determine eligibility. At a minimum, each application must include the information required in § 256.6, i.e., name, family size, income, and financial status, condition of present housing, the type of housing assistance requested (Category A, B, C or D).

(4) A determination shall be made as to which HIP applicants are eligible to receive assistance and a priority list of applicants developed in accordance with the HIP Selection Criteria under § 256.7.

(5) The type of assistance to be provided each selected applicant, the estimated cost, and construction schedule thereof shall be determined.

(c) *Applicant case file.* A case file shall be kept on each approved applicant. The case file shall contain at a minimum:

(1) Tribal enrollment information.

(2) The condition of existing housing.

(3) Family size and composition.

(4) Income.

(5) Evidence of the inability of the applicant to secure housing from other sources.

(6) Evidence that the applicant has not received HIP assistance after October 1, 1986.

The case file shall become a part of the record and must be retained for at least three years after the completion of the project.

(d) *Construction work plan—Repair and renovation of existing housing or construction of new housing.* A work plan shall be prepared specifying, by HIP Categories, the number of housing units to be repaired, renovated or built new. The repair, renovation, and new housing construction work shown on the plan must be consistent with the housing assistance work specified on the priority list for each applicant. The plan shall include the following:

(1) *Category A Nonstandard Repairs.* This category shall include a description of each repair to be performed, the cost estimate for each repair, the location of each unit to be repaired, a schedule, and the name of each applicant that is receiving this assistance.

(2) *Category B Standard Repairs and Category D New Housing.* This category shall include location of each unit to be repaired or built new, and the names of applicants to receive these units. In addition, for Category B repairs and Category D new housing, the plan shall also include preliminary drawings, specifications, cost estimates, and a phased construction schedule for each unit to be repaired, renovated, or built new. Drawings should fix and illustrate what is required to repair or build new houses by providing, when applicable: A design, elevations, unit and room total square feet, general construction, placement of heating mechanical, electrical, and utility systems, site layout for grading and utility distribution. Specifications should describe clearly the scope of work to repair or build a new house, the workmanship involved, and a statement describing the quality of materials.

(3) *Category C Down Payments.* This category shall include a description and location of the house to be purchased, verification of the applicant's intent to purchase a standard house, the sale price of the house, and a verification by the lender as to the amount of down payment and closing costs required for the applicant to qualify for the loan.

(e) *Construction start and completion dates.* An anticipated construction start and completion date for each repair and new construction project to be performed shall be established. The construction start time should consider such factors as weather, location, family participation, availability of materials, and site preparation. All HIP recipients listed on the priority list must be notified of the work to be performed.

(f) *Applicable codes.* Depending upon the type of construction involved, the appropriate local codes will be followed. If local codes are not available, applicable State or National codes will be followed.

(g) *Reporting requirements.* Quarterly reports shall be prepared on construction work undertaken and expenditures related to that construction work. The quarterly reports are due on the 15th day after the end of each calendar quarter, and shall contain for each HIP grant, at a minimum:

(1) Name of grantee.

(2) Date of construction start.

(3) Date of completion.

(4) Cost.

(h) The HIP will serve those eligible applicants on an approved priority list. Design, construction, and repair of dwelling units may be accomplished through:

(1) Direct grants to individual applicants.

(2) Contracts or grant agreements with Indian tribes.

(3) Contracts with private Indian or non-Indian contracting firms in accordance with normal BIA contract procedures; or

(4) Programs administered directly by the BIA.

§ 256.9 Inspections.

(a) The BIA is responsible for inspection or the assurance that there is adequate provision for inspection by BIA employees, contractors, or subcontractors during the course of construction. The BIA shall have access at all reasonable times to work under contract for monitoring and inspection.

(b) Final payment for work performed will not be made until a final inspection is conducted by the BIA, and a determination is made that the work complies with all contract requirements.

§ 256.10 Appeals.

Actions taken by BIA officials may be appealed pursuant to part 2 of this chapter.

§ 256.11 Flood disaster protection.

No HIP funds, under Categories in paragraphs (b), (c), and (d) of § 256.4, will be expended in areas designated as having special flood hazards under the Flood Disaster Protection Act of 1973 (Pub. L. 93–234, 87 Stat. 977), unless the requirements for suitable flood insurance are met.

§ 256.12 Information collection.

The information collection requirements contained in § 256.5 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0084. The information will be used to determine eligibility to participate in the HIP. Individuals who wish to participate in the HIP must contact the tribe in whose jurisdiction they reside, or the BIA office closest to their residence. Eligibility is determined based upon the criteria listed in § 256.6. Response is required to obtain a benefit. Public reporting burden for this form is estimated to average thirty minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form.

APPENDIX A TO PART 256—SUMMARY OF SELECTION CRITERIA—POINT SCHEDULE

If applicant is	Add
Factor No. 1: Income (Up to 40 points):	
At or below 125% of Poverty Income Guidelines	10
Between 100% and 76% of Poverty Income Guidelines	20
Between 75% and 51% of Poverty Income Guidelines	30
At or below 50% of Poverty Income Guidelines	40
If applicant is	**Deduct**
Deduction Schedule for Income in Excess of Poverty Income Guidelines (Maximum deduction of 40 points):	
Over 125% of Poverty Income Guidelines	0
At or over 150% of Poverty Income Guidelines	−10
At or over 175% of Poverty Income Guidelines	−20
At or over 200% of Poverty Income Guidelines	−30
201% to 224% of Poverty Income Guidelines	−40
	Add
Factor No. 2: Family Size (5 points per dependent child):	
Single applicant, no children	0
Single applicant, one child	5
Married couple, no children	0
Married couple, one child	5
Married or single, each additional child	5

APPENDIX A TO PART 256—SUMMARY OF SELECTION CRITERIA—POINT SCHEDULE—Continued

If applicant is	Add
Factor No. 3: Overcrowded Conditions (Add up to 10 Points):	
Contiguous 48 States—Depending upon the circumstances and the degree of overcrowding, as well as the family structure, the committee reviewing HIP applications can award as little as 1 point, or as many as 10 points, for overcrowding.	
Alternative Point System for Alaska only	**Add**
0–50 square feet per person	10
51–100 square feet per person	8
101–150 square feet per person	6
151–200 square feet per person	4
201–300 square feet per person	2
Factor No. 4: Age (Add up to 21 points) (See Appendix B):	
Age 55 and older, one point per year up to 75 years.	
Single Elderly, living alone = 150% of Elderly schedule.	
Factor No. 5: Handicapped and Disabled (Add up to 20 points):	
Points will be awarded based upon extent of disability.	
Factor No. 6: HUD/IHA Financed Houses (Deduct 30 Points).	

APPENDIX B TO PART 256—HIP SELECTION CRITERIA

[Factor No. 4—Age]

Age	Family member—100%; Add points	Living alone—150%; Add points
55	1	2
56	2	3
57	3	5
58	4	6
59	5	8
60	6	9
61	7	11
62	8	12
63	9	14
64	10	15
65	11	17
66	12	18
67	13	20
68	14	21
69	15	23
70	16	24
71	17	26
72	18	27
73	19	29
74	20	30
75 & Over	21	32

SUBCHAPTER L—HERITAGE PRESERVATION

PART 262—PROTECTION OF ARCHAEOLOGICAL RESOURCES

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262.2 Definitions.
262.3 Consultation to determine need for a permit.
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262.7 Notice to Indian tribes of possible harm to cultural or religious sites.
262.8 Custody of archaeological resources.

AUTHORITY: 16 U.S.C. 470aa–11.

CROSS REFERENCE: For uniform regulations issued by the Departments of Agriculture, Defense, and the Interior and the Tennessee Valley Authority pertaining to the protection of archaeological resources, and for supplemental regulations issued by the Department of the Interior pertaining to the same, see 43 CFR part 7, subparts A and B.

SOURCE: 58 FR 65249, Dec. 13, 1993, unless otherwise noted.

§262.1 Purpose, scope and information collection.

(a) *Purpose and scope.* The purpose of this part is to implement certain provisions of the Archaeological Resources Protection Act (Act) of 1979 (16 U.S.C. 470aa–11), in accordance with section 10(b) and consistent with uniform regulations promulgated under section 10(a) by the Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority (43 CFR part 7, 36 CFR part 296, 32 CFR parts 229 and 1312) on February 6, 1984. This part shall provide guidance to officials of the Bureau of Indian Affairs (BIA) on the implementation of the Act as it pertains to this agency.

(b) *Information collection.* The information collection requirements contained in §262.5 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

§262.2 Definitions.

As used for purposes of this part:

(a) *Funerary objects* means objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with human remains of Indians either at the time of death or later, or to have been made exclusively for burial purposes or to contain such remains.

(b) *Sacred objects* means specific ceremonial objects that are needed by traditional Indian religious leaders for the practice of traditional Indian religions by their present day adherents.

(c) *Object of cultural patrimony* means an object having ongoing historical, traditional, or cultural importance central to an Indian tribe itself and that shall have been considered inalienable by the tribe at the time the object was separated therefrom.

(d) *Indian individual* means:

(1) Any person who is an enrolled member of a Federally recognized Indian tribe;

(2) Any person who is a descendent of such a member and was, on June 1, 1934, physically residing within the present boundaries of any Indian reservation; or

(3) Any other person of one-half or more Indian blood of tribes indigenous to the United States.

(e) *Lands of Indian tribes* means land or any interest therein:

(1) The title to which is held in trust by the United States for an Indian tribe; or

(2) The title to which is held by an Indian tribe, but which cannot be alienated or encumbered by the owner without the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law or because of a Federal law directly imposing such restrictions.

(f) *Lands of Indian individuals* means land or any interest therein:

(1) The title to which is held in trust by the United States for the benefit of Indian individuals; or

(2) The title to which is held by Indian individuals, but which cannot be alienated or encumbered by the owner without the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law or because of a Federal law directly imposing such restrictions.

§ 262.3 Consultation to determine need for a permit.

(a) Any person, except as provided in the uniform regulations at 43 CFR 7.5(b) through (d), who proposes to excavate or remove archaeological resources on Indian lands or on properties owned or administered by the BIA must first apply for and secure a permit under the Act. Procedures relating thereto are set forth in § 262.5 of this part.

(b) No permit under the Act, nor any other Federally issued license or authorization, is required for archaeological investigations that do not involve the excavation or removal of archaeological resources on these lands, except for BIA consent on properties that it owns or administers. Notwithstanding, persons other than those covered under 43 CFR 7.5(b) through (d) shall, before engaging in such investigations:

(1) Write to the head of each tribal government having jurisdiction over the lands where investigations are to be conducted and request that he or she provide, within 30 days, written information on any permit, license or other form of authorization the tribe might require for the work proposed; and

(2) Provide the BIA Area Director with a copy of the tribe's written response (or a copy of the request to the tribe if 30 days have elapsed without any response) plus a brief but clear written description of the proposed work and obtain his or her written determination as to whether or not a permit under the Act is required. Area Directors shall provide determinations within 10 working days after receiving such documentation.

§ 262.4 Activities by Indian tribes or individuals that require a permit.

(a) No Indian tribe may, without a permit under the Act, excavate or remove archaeological resources on:

(1) Lands of another Indian tribe; or

(2) Lands of Indian individuals, except those on which the law of that tribe regulates such activity.

(b) No individual Indian may, without a permit under the Act, excavate or remove archaeological resources on any Indian lands (including his or her own) other than those on which the law of the tribe of which he or she is a member regulates such activity.

(c) No person, as an employee, consultant, advisor or in any other capacity as an agent for any Indian tribe, shall be exempt from the permit requirements of the Act, except in the cases listed below:

(1) No permit shall be required if a person is a member of the tribe having jurisdiction over the resources in question and the law of that tribe regulates the excavation or removal of archaeological resources on its lands.

(2) Tribal employees need not submit permit applications to the BIA if:

(i) The proposed excavation or removal of archaeological resources is within the normal scope of their duties or otherwise carried out by direction of the tribal government;

(ii) The work is on Indian lands of the tribe or on which the law of that tribe regulates the excavation or removal of archaeological resources;

(iii) The tribe ensures that the provisions for permit issuance in this part and at 43 CFR part 7 have been met by other documented means; and

(iv) Before beginning the work, the tribe notifies the Area Director about the nature and location of the proposed work and allows 10 working days after mailing a notification or 5 working days after an oral notification (provided this is documented) for the Area Director to respond. The Area Director need only respond when action is required under § 262.7 of this part, and may do so either in writing or, if documented, orally.

(3) Consultants, advisors, and others serving by contractual agreement as agents for Indian tribes may use the provisions in § 262.5(f) of this part to expedite the process of obtaining a permit.

(4) Persons serving as agents for Indian tribes as employees or by contractual agreement may abbreviate the consultation required in § 262.3(b) of this part by disregarding the requirement to consult first with the tribe and, provided the communication is documented, by consulting with the Area Director orally. In these cases, the Area Director need only respond when a permit is deemed necessary and may do so either orally or in writing. If

a response is not received within 3 working days after an oral description of the proposed work is made or within 7 working days after a written description is mailed to the Area Director, the work may proceed.

§262.5 Application for permits.

(a) Permits from the BIA shall be issued when an applicant meets the requirements set out in 43 CFR 7.8, and may be conditioned, modified, suspended, or revoked by the Area Director. Area Directors may delegate this authority to Agency Superintendents, but only on a permit-by-permit basis and only to those who have adequate professional support available.

(b) Prospective applicants may obtain details on how to apply for a permit by contacting the Area Director, at BIA Area Offices in: Aberdeen, SD; Albuquerque, NM; Anadarko, OK; Arlington, VA; Billings, MT; Gallup, NM; Juneau, AK; Minneapolis, MN; Muskogee, OK; Phoenix, AZ; Portland, OR; or Sacramento, CA; or by writing to the Deputy Commissioner of Indian Affairs, Department of the Interior, Washington, DC 20240.

(c) Permit applications proposing the excavation or removal of archaeological resources on Indian lands shall include the following consent documents:

(1) Written permission from the Indian landowner and from the tribe, if any, having jurisdiction over those lands. This must contain such terms and conditions as the landowner or tribe may request be included in the permit. Where the permission is from a tribe, it should either state that no religious or cultural site will be harmed or destroyed by the proposed work or specify terms and conditions that the permit must include in order to safeguard against such harm or destruction.

(i) For lands of Indian tribes, permission must be granted by the tribe.

(ii) For lands of Indian individuals not under tribal jurisdiction, permission must be granted by the owner(s), except as provided in §262.6.

(iii) For lands of Indian individuals under tribal jurisdiction, permission must be granted by both the owner(s), except as provided in §262.6, and the tribe having such jurisdiction. Where an applicant is the owner, consent must still be obtained from the tribe.

(iv) Where the ownership of lands of Indian individuals is multiple, permission must be granted by the owners of a majority of interests, except as provided in §262.6. The same shall apply where the applicant is one of the owners.

(v) Where the terms and conditions a tribe or landowner requests be included in a permit are in conflict with the provisions of this or any other Act, with Federal regulations, or with each other, the Area Director may negotiate with the requestor to eliminate the conflict. If the conflict remains, the permit may not be issued.

(2) Copies of any permits required by tribal law for archaeological work on lands under tribal jurisdiction. This may serve as written consent from the tribe for the purposes of §262.5(c)(1).

(3) Written agreement by the Indian landowner(s) to release archaeological resources for curation or study, as specified in §262.8(b).

(d) Permits issued by the BIA shall include the following or similar condition: ''Human remains of Indians, funerary objects, sacred objects, and objects of cultural patrimony may not be excavated or removed unless the permittee has obtained the written consent of the Area Director. In order to obtain consent, the permittee shall present to the Area Director written evidence of prior consultation with the appropriate Indian tribe. If the lands containing the remains or objects are tribal lands, the permittee shall first obtain the written consent of the tribe having jurisdiction over the lands.'' Determination as to which tribe is the appropriate tribe shall be made in accordance with §262.8(a). Area Director consent shall be based on the scientific appropriateness of the research objectives and provisions for recovery, recording, and analysis and may, if documented, be oral. This condition may be omitted from the permit when such excavation or removal is proposed, and the requirements of the condition are met, in the permit application.

(e) Information and assistance in contacting Indian tribes and individual Indian landowners for the purpose of

requesting the consent documents listed under paragraph (c) of this section or of seeking the consultation and consent required under paragraph (d) of this section may be obtained from the BIA office to which the permit application is submitted.

(f) Contractual agreements with the BIA or Indian tribes and permits issued by Indian tribes may be accepted as support documents for permit applications. They may also double as permit documents, if they demonstrate that the provisions for permit issuance in this part and at 43 CFR part 7 have been met and they are attached to a Department of the Interior permit form. This form must be signed by the Area Director, but need only contain the following or similar statement: ''This permit is issued to the person(s) named, and in accordance with the terms and conditions in the attached (contractual agreement/tribal permit).''

(g) Area Directors shall respond to permit applications within 15 working days of receipt.

§ 262.6 Landowner consent by the Secretary.

The Secretary of the Interior, or delegate thereof, may, on behalf of the owner(s) of lands of Indian individuals, grant consent for the purposes in § 262.5(c)(1) and (3) when the Secretary or his or her delegate finds that such consent will not result in any injury to the land or owner(s) and when one or more of the following conditions exist:

(a) The owner is a minor or a person *non compos mentis;*

(b) The heirs or devisees of a deceased owner have not been determined;

(c) The whereabouts of the owner are unknown;

(d) Multiple owners are so numerous that the Secretary or his or her delegate finds, after documenting his or her efforts to do so, that it would be impractical to obtain their consent, as prescribed in § 262.5(c)(1)(iv) and provided the Secretary or his or her delegate also notifies, in writing, the tribe, if any, having jurisdiction over the land and allows 15 working days from the date of mailing date for response; or

(e) The owner has given the Secretary or his or her delegate written authority to grant such consent on his or her behalf.

§ 262.7 Notice to Indian tribes of possible harm to cultural or religious sites.

When consent by an Indian tribe to proposed excavation or removal of archaeological resources from Indian lands it owns or over which it has jurisdiction contains all of the information written as prescribed and advised in § 262.5(c)(1), it may be taken to mean that subject to such terms and conditions as the tribe might specify, issuance of a permit for the proposed work will not result in harm to, or destruction of, any site of religious or cultural importance. No further notification is necessary, unless the Area Director has reason to believe that the proposed work might harm or destroy a site of religious or cultural importance to another tribe or Native American group. He or she shall then follow the notification procedures at 43 CFR 7.7. Those procedures must also be followed when proposed work might affect lands of Indian individuals over which there is no tribal jurisdiction or public lands owned or administered by the BIA.

§ 262.8 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from Indian lands, except for human remains of Indians, funerary objects, sacred objects and objects of cultural patrimony, remain the property of the Indian tribe or individual(s) having rights of ownership over such lands. Ownership and right of control over the disposition of the excepted items shall be in accordance with the order of priority provided in the Native American Graves Protection and Repatriation Act (Pub. L. 101–601), adapted for the purpose of this rule as follows:

(1) In the case of human remains of Indians and funerary objects, in the lineal descendants of the Indian; or

(2) In any case in which such lineal descendants cannot be ascertained, and in the case of sacred objects and objects of cultural patrimony:

(i) In the Indian tribe on whose tribal lands, or on the individual Indian lands of whose members, such remains or objects are discovered;

(ii) In the Indian tribe recognized as aboriginally occupying the public lands owned or administered by the BIA on which such remains or objects are discovered, if upon notice, that tribe states a claim for those remains or objects; or

(iii) Where it can be so demonstrated by a preponderance of evidence, in the tribe other than that in paragraph (a)(2)(i) or (ii) of this section having the strongest cultural relationship with such remains or objects, if, upon notice, that tribe states a claim for those remains or objects.

(iv) The Area Director shall provide the required notice to any Indian tribe identified under paragraph (a)(2)(ii) or (iii) of this section, in writing, within 5 working days after such identification has been documented and confirmed, and shall at the same time submit a copy of the notice for publication in the FEDERAL REGISTER. This notice shall include a description of the remains or objects; of where, how, and why they were excavated or removed; and of the evidence used to identify the tribe being notified. The remains or objects in question shall be considered the property of the pertinent tribe under paragraph (a)(2)(i) of this section or, in the case of paragraph (a)(2)(ii) of this section, held and administered by the BIA until or unless a claim is stated.

(b) No permit for the excavation or removal of archaeological resources on Indian lands may be issued without the written consent of the Indian landowner(s) either to grant custody of the resources recovered (other than human remains of Indians, funerary objects, sacred objects or objects of cultural patrimony) to a curatorial facility that meets the requirements of 36 CFR part 79 or to allow the permittee a reasonable period of time to hold or have ready access to them at an appropriate location for study. The excepted remains and objects are covered under § 262.5(d) of this part which, in general, permits their excavation or removal only when the research objectives and provisions for recovery, recording, and analysis are scientifically appropriate. Written consent to custody by a curatorial facility may include terms and conditions regarding curation (e.g., cleaning, viewing, loaning, studying, etc.), provided these are consistent with 36 CFR part 79.

(1) On lands of Indian tribes, consent must be obtained from the tribe.

(2) On lands of Indian individuals, consent must be obtained from the owner of the land or the owners of a majority of interests therein, except as provided in § 262.6.

(3) Where consent is by the owners of a majority of interests, it must, if the archaeological resources are to be retained by or returned after study to the interest holders, designate a representative to receive those resources. Whether and how these are subsequently distributed among themselves is a matter for the interest holders to decide.

(c) The Area Director may, after notifying the tribe (if any) having jurisdiction over such lands and allowing 15 working days for response, decline to issue a permit for lands of Indian individuals if he or she has any verifiable reason to believe that archaeological resources retained by the landowner(s) after being studied will be sold or exchanged other than to the tribe having jurisdiction or to a curatorial facility that meets the requirements of 36 CFR part 79. The basis for decline shall be that excavation or removal of resources under such circumstances would not be in the public interest and would thus be contrary to the purposes of the Act.

(d) The landowner(s) alone may grant custody of archaeological resources (except for human remains, funerary objects, sacred objects and objects of cultural patrimony, which are subject to the provisions of paragraph (a) of this section) excavated or removed from lands of Indian individuals that are under tribal jurisdiction to a curatorial facility that meets the requirements of 36 CFR part 79. When, however, such consignment constitutes the ultimate disposition of these resources, the tribe having jurisdiction must also grant its consent. Any subsequent exchange or disposition by the facility

must have the consent of both the landowner(s) and the tribe.

PART 265—ESTABLISHMENT OF ROADLESS AND WILD AREAS ON INDIAN RESERVATIONS

Sec.
265.1 Definition of roadless area.
265.3 Roads prohibited.

CROSS REFERENCE: For general regulations pertaining to the construction of roads, see part 170 of this chapter.

§ 265.1 Definition of roadless area.

A roadless area has been defined as one which contains no provision for the passage of motorized transportation and which is at least 100,000 acres in extent. Under this definition the Secretary of the Interior ordered (3 FR 609, Mar. 22, 1938) certain roadless areas established on Indian reservations. The following is the only presently existing roadless area:

Name of area—Wind River Reserve.
Reservation—Shoshone.
State—Wyoming.
Approximate acreage—180,387

(a) The boundaries of the Wind River Reserve roadless area are as follows:

WIND RIVER MERIDIAN, WYO.

Starting at the SW corner of sec. 22, T. 2 S., R. 3 W., on the south boundary of the Wind River Indian Reservation, thence north six (6) miles to the NE corner of sec. 28, T. 1 S., R. 3 W., thence west three (3) miles to the SW corner of sec. 19, T. 1 S., R. 3 W., thence north four (4) miles along range line to the Wind River Base Line, thence west one (1) mile along Wind River Base Line to the SW corner of Sec. 36, T. 1 N., R. 4 W., thence north six (6) miles to the NW corner of sec. 1, T. 1 N., R. 4 W., thence west five (5) miles along township line to the NE corner of sec. 1, T. 1 N., R. 5 W., thence north four and one-half (4½) miles along range line to the NE corner of the SE ¼ of sec. 12, T. 2 N., R. 5 W., thence west one and one-half (1½) miles to the center of sec. 11, T. 2 N., R. 5 W., thence on a straight line in a northwesterly direction to the top of Bold Mountain, thence on a straight line to the SE corner of sec. 35, T. 4 N., R. 6 W., thence west one (1) mile along township line to the SW corner of sec. 35, T. 4 N., R. 6 W., thence north two (2) miles to the NW corner of sec. 26, T. 4 N., R. 6 W., thence on a straight line in a northwesterly direction to the point where the north line of sec. 15, T. 4 N., R. 6 W. intersects the west boundary of the reservation, thence south, southeasterly and east along the reservation boundary to point of beginning.

(5 U.S.C. 301)

[30 FR 9813, Aug. 6, 1965. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 265.3 Roads prohibited.

(a) Within the boundaries of this officially designated roadless area it will be the policy of the Interior Department to refuse consent to the construction or establishment of any routes passable to motor transportation, including in this restriction highways, roads, truck trails, work roads, and all other types of ways constructed to make possible the passage of motor vehicles either for transportation of people or for the hauling of supplies and equipment, unless the requirements of fire protection, commercial use for the Indians' benefit or actual needs of the Indians clearly demand otherwise.

(b) Foot trails and horse trails are not barred. The Superintendent of the Wind River Reservation on which this roadless area has been established will be held strictly accountable for seeing that the area is maintained in a roadless condition. Elimination of this area or any part thereof from the restriction of this order will be made only upon a written showing of an actual and controlling need.

(5 U.S.C. 301)

[30 FR 9814, Aug. 6, 1965. Redesignated at 47 FR 13327, Mar. 30, 1982]

CROSS REFERENCE: For rights-of-way for highways over Indian lands, see part 169 of this chapter.

SUBCHAPTER M—INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT PROGRAM

PART 273—EDUCATION CONTRACTS UNDER JOHNSON-O'MALLEY ACT

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AUTHORITY: Secs. 201–203, Pub. L. 93–638, 88 Stat. 2203, 2213–2214 (25 U.S.C. 455–457), unless otherwise noted.

SOURCE: 40 FR 51303, Nov. 4, 1975, unless otherwise noted.

Subpart A—General Provisions

§273.1 Purpose and scope.

(a) The purpose of the regulations in this part is to set forth the application and approval process for education contracts under the Johnson-O'Malley Act. Such contracts shall be for the purpose of financially assisting those efforts designed to meet the specialized and unique educational needs of eligible Indian students, including programs supplemental to the regular school program and school operational support, where such support is necessary to maintain established State educational standards.

(b) The application and approval process in this part applies specifically to contracts with a State, school district, or Indian corporation.

(c) Contracts with tribal organizations for supplemental and operational support will be entered into only upon the request of an Indian tribe(s), and

shall be subject to the provisions of part 271 of this chapter and 41 CFR part 14H–70, except as provided in § 273.11.

(d) Nothing in these regulations shall be construed as:

(1) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe;

(2) Authorizing or requiring the terminiation of any existing trust responsibility of the United States with respect to the Indian people; or,

(3) Permitting significant reduction in services to Indian people as a result of this part.

(e) Nothing in these regulations shall be construed to mandate an Indian tribe to request a contract or contracts. Such requests are strictly voluntary.

§ 273.2 Definitions.

As used in this part:

(a) ''Area Director'' means the official in charge of a Bureau of Indian Affairs Area Office.

(b) ''Bureau'' means the Bureau of Indian Affairs.

(c) ''Commissioner'' means the Commissioner of Indian Affairs, under the direction and supervision of the Assistant Secretary—Indian Affairs, who is responsible for the direction of day-to-day operations of the Bureau of Indian Affairs.

(d) ''Days'' means calendar days.

(e) ''Economic enterprise'' means any commercial, industrial, agricultural, or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(f) ''Education plan'' means a comprehensive plan for the programmatic and fiscal services of and accountability by a contractor for the education of eligible Indian students under this part.

(g) ''Indian tribe'' means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the U.S. Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(h) ''Indian corporation'' means a legally established organization of Indians chartered under State or Federal law and which is not included within the definition of ''tribal organization'' given in paragraph (v) of this section.

(i) ''Indian Education Committee'' means one of the entities specified by § 273.15.

(j) ''Indian'' means a person who is a member of an Indian tribe.

(k) ''Johnson-O'Malley Act'' means the Act of April 16, 1934 (48 Stat. 596), as amended by the Act of June 4, 1936 (49 Stat. 1458, 25 U.S.C. 452–456), and further amended by the Act of January 4, 1975 (88 Stat. 2203).

(l) ''Operational support'' means those expenditures for school operational costs in order to meet established State educational standards or State-wide requirements.

(m) ''Pub. L. 93–638'' means the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638; 88 Stat. 2203).

(n) ''Previously private school'' means a school (other than a Federal school formerly operated by the Bureau) that is operated primarily for Indian students from age 3 years through grades 12; and, which at the time of application is controlled, sanctioned, or chartered by the government body(s) of an Indian tribe(s).

(o) ''Reservation'' or ''Indian reservation'' means any Indian tribe's reservation, pueblo, colony, or rancheria, including former reservations in Oklahoma, Alaska Natives regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

(p) ''School district'' or ''local education agency'' means that subdivision of the State which contains the public elementary and secondary educational institutions providing educational services and is controlled by a duly elected board, commission, or similarly constituted assembly.

(q) ''Secretary'' means the Secretary of the Interior.

(r) ''State'' means a State of the United States of America or any political subdivision of a State.

(s) ''Superintendent'' means the official in charge of a Bureau of Indian Affairs Agency Office.

(t) ''Supplemental programs'' means those programs designed to meet the specialized and unique educational needs of eligible Indian students which may have resulted from socio-economic conditions of the parents, from cultural or language differences or other factors, and as provided by § 273.34(b).

(u) ''Tribal government,'' ''tribal governing body'' and ''tribal Council'' means the recognized governing body of an Indian tribe.

(v) ''Tribal organization,'' means the recognized governing body of any Indian tribe or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; *Provided,* That a request for a contract must be made by the Indian tribe that will receive services under the contract; *Provided further,* That in any case where a contract is let to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting of such contract.

(w) ''Assistant Secretary—Indian Affairs'' means the Assistant Secretary—Indian Affairs who discharges the responsibility of the Secretary for activities pertaining to Indians and Indian Affairs.

[40 FR 51303, Nov. 4, 1975, as amended at 41 FR 5098, Feb. 4, 1976; 43 FR 37445, Aug. 23, 1978; 45 FR 13451, Feb. 29, 1980]

§ 273.3 Revision or amendment of regulations.

In order to make any substantive revision or amendments to regulations in this part, the Secretary shall take the following actions:

(a) Consult with Indian tribes and national and regional Indian organizations to the extent practicable about the need for revision or amendment and consider their views in preparing the proposed revision or amendment.

(b) Publish the proposed revisions or amendments in the FEDERAL REGISTER as proposed rulemaking to provide adequate notice to, and receive comments from, all interested parties.

(c) After consideration of all comments received, publish the regulations in the FEDERAL REGISTER in final form not less than 30 days before the date they are made effective.

(d) Annually consult with Indian tribes and national and regional Indian organizations about the need for revision or amendment, and consider their views in preparing the revision or amendment.

(e) Nothing in this section shall preclude Indian tribes or national or regional Indian organizations from initiating request for revisions or amendments subject to paragraphs (a), (b), and (c) of this section.

§ 273.4 Policy of maximum Indian participation.

The meaningful participation in all aspects of educational program development and implementation by those affected by such programs is an essential requisite for success. Such participation not only enhances program responsiveness to the needs of those served, but also provides them with the opportunity to determine and affect the desired level of educational achievement and satisfaction which education can and should provide. Consistent with this concept, maximum Indian participation in the development, approval and implementation of all programs contracted under this part shall be required.

Subpart B—Application Process

§ 273.11 Eligible applicants.

(a) Any State, school district, tribal organization or Indian corporation is eligible to apply for contracts for supplemental or operational support programs. For the purposes of this part, previously private schools as defined in § 273.2(n) are considered tribal organizations.

(b) States, school districts, or Indian corporations shall apply for contracts for supplemental or operational support programs as required in this part.

(c) Tribal organizations must comply with the following requirements to obtain contracts for supplemental programs or operational support:

(1) The application submitted by the tribal organization shall meet the requirements in § 273.20 in addition to those in § 271.14 of this chapter.

(2) The requirements in §§ 271.1 through 271.27, 271.41 through 271.52, 271.54, 271.61 through 271.66, and 271.81 through 271.84 shall apply to such contracts with tribal organizations.

(3) The provisions in §§ 271.71 through 271.77 of this chapter concerning retrocession and reassumption of programs do not apply to a tribal organization retroceding a contract for supplemental programs or operational support as the Bureau does not operate education programs authorized to be contracted under the Johnson-O'Malley Act. However, the tribal organization may retrocede such a contract and the Bureau will then contract with a State, school district, or Indian corporation under this part for the supplemental programs or operational support.

(4) The requirements in §§ 273.12 through 273.18, 273.20, 273.21, 273.31 through 273.38, 273.41, 273.51 and 273.52 shall apply to such contracts with tribal organizations.

(5) The requirements in 41 CFR part 14H–70 shall apply to such contracts with tribal organizations.

[40 FR 51303, Nov. 4, 1975, as amended at 41 FR 5098, Feb. 4, 1976]

§ 273.12 Eligible students.

Indian students, from age 3 years through grade(s) 12, except those who are enrolled in Bureau or sectarian operated schools, shall be eligible for benefits provided by a contract pursuant to this part if they are ¼ or more degree Indian blood and recognized by the Secretary as being eligible for Bureau services. Priority shall be given to contracts (a) which would serve Indian students on or near reservations and (b) where a majority of such Indian students will be members of the tribe(s) of such reservations (as defined in § 273.2(o)).

§ 273.13 Proposals eligible for contracts.

(a) Any proposal to contract for funding a program which meets the definition of a supplemental program given in § 273.2(t) will be considered an eligible proposal under this part.

(b)(1) To contract for operational support, a public school district shall be required to establish as part of the proposal that:

(i) It cannot meet the applicable minimum State standards or requirements without such funds.

(ii) It has made a reasonable tax effort with a mill levy at least equal to the State average in support of educational programs.

(iii) It has fully utilized all other sources of financial aid, including all forms of State aid and Pub. L. 874 payments. The State aid contribution per pupil must be at least equal to the State average.

(iv) There is at least 70 percent eligible Indian enrollment within the school district.

(v) It shall clearly identify the educational needs of the students intended to benefit from the contract.

(vi) It has made a good faith effort in computing State and local contributions without regard to contract funds pursuant to this part.

(vii) It shall not budget or project a deficit by using contract funds pursuant to this part.

(2) The requirements given in paragraph (b)(1) of this section do not apply to previously private schools.

(c) At his discretion, the Commissioner may consider as eligible a proposal to contract under which a school district will be reimbursed for the full per capita costs of educating Indian students who meet all of the following:

(1) Are members of recognized Indian tribes.

(2) Do not normally reside in the State in which the school district is located.

(3) Are residing in Federal boarding facilities for the purpose of attending public schools within the school district.

§273.14 Preparing the education plan.

A prospective contractor in consultation with its Indian Education Committee(s) shall formulate an education plan and submit it to the appropriate Area Director as a part of the application to contract required by §273.20. Such plan shall become a part of any contract awarded. The education plan shall contain:

(a) The education programs approved by the Indian Education Committee(s) as required in §273.17.

(b) Other requirements for the education plan given in §273.18.

§273.15 Establishment of Indian Education Committee.

(a) When a school district to be affected by a contract(s) for the education of Indians pursuant to this part has a local school board not composed of a majority of Indians, the tribal governing body(s) of the Indian tribe(s) affected by the contract(s) under this part shall specify one of the following entities to serve as the Indian Education Committee for the purpose of this part:

(1) An Indian Education committee to be elected from among the parents (including persons acting *in loco parentis* except school administrators or officials) of eligible Indian students enrolled in the school(s) affected by a contract(s) under this part; or

(2) A local Indian committee established pursuant to section 305(b)(2)(B)(ii) of the Act of January 23, 1972 (86 Stat. 235) and existing prior to January 4, 1975; or

(3) An Indian advisory school board or Indian Education Committee established pursuant to the Johnson-O'Malley Act and existing prior to January 4, 1975.

(b) When the local school board is not composed of a majority of Indians and the tribal governing body(s) of the Indian tribe(s) affected by a contract(s) under this part determine which of the entities provided for in paragraph (a) of this section is to serve as the Indian Education Committee for the purpose of this part, it shall notify the Area Director of such determination by January 15 preceding the school year for which the contract will be let.

(c) The Indian Education Committee established under paragraph (a) of this section and its members shall establish procedures under which the Committee shall serve. Such procedures shall be set forth in the Committee's organizational documents and by-laws. Each Committee shall file a copy of its organizational documents and by-laws with the appropriate Area Director, together with a list of its officers and members as soon as practicable after the Committee is organized.

(d) The existence of an Indian Education Committee shall not limit the continuing participation of the rest of the Indian community in all aspects of programs contracted under this part.

§273.16 Powers and duties of Indian Education Committee.

(a) Consistent with the purpose of the Indian Education Committee, each such Committee shall be vested with the authority to:

(1) Participate fully in the planning, development, implementation, and evaluation of all programs, including both supplemental and operational support, conducted under a contract or contracts pursuant to this part. Such participation shall include further authority to:

(i) Recommend curricula, including texts, materials, and teaching methods to be used in the contracted program or programs.

(ii) Approve budget preparation and execution.

(iii) Recommend criteria for employment in the program.

(iv) Nominate a reasonable number of qualified prospective educational programmatic staff members from which the contractor would be required to select.

(v) Evaluate staff performance and program results and recommend appropriate action to the contractor.

(2) Approve and disapprove all programs to be contracted under this part. All programs contracted pursuant to this part shall require the prior approval of the appropriate Indian Education Committee.

(3) Secure a copy of the negotiated contract(s) which include the program(s) approved by the Indian Education Committee.

(4) Recommend to the Commissioner through the appropriate Bureau contracting officer cancellation or suspension of a contract(s) which contains the program(s) approved by the Indian Education Committee if the contractor fails to permit such Committee to exercise its powers and duties as specified by this section.

(b) The organizational papers and by-laws of the Indian Education Committee may include additional powers and duties which would permit the Committee to:

(1) Participate in negotiations concerning all contracts under this part.

(2) Make an annual assessment of the learning needs of Indian children in the community affected.

(3) Have access to all reports, evaluations, surveys, and other program and budget related documents determined necessary by the Committee to carry out its responsibilities, subject only to the provisions of § 273.49.

(4) Request periodic reports and evaluations regarding the Indian education program.

(5) Hear grievances related to programs in the education plan.

(6) Meet regularly with the professional staff serving Indian children and with the local education agency.

(7) Hold committee meetings on a regular basis which are open to the public.

(8) Have such additional powers as are consistent with these regulations.

§ 273.17 Programs approved by Indian Education Committee.

(a) All programs contracted under this part shall:

(1) Be developed and approved in full compliance with the powers and duties of the Indian Education Committee as set out in § 273.16 and as may be contained in the Committee's organizational documents and by-laws.

(2) Be included as a part of the education plan provided for in § 273.14.

(b) No program contracted pursuant to this part shall be changed from the time of its original approval by the Indian Education Committee to the end of the contract period without the prior approval, in writing, of the Committee.

(c) Programs developed or approved by the Indian Education Committee pursuant to this part may, at the option of such Committee, include funds for the performance of Committee duties, including the following:

(1) Members' attendance at regular and special meetings, workshops and training sessions, as the Committee deems appropriate.

(2) Such other reasonable expenses incurred by the Committee in performing its primary duties, including the planning, development, implementation and evaluation of the program.

§ 273.18 Additional requirements for education plan.

In addition to incorporating the programs approved by the Indian Education Committee(s) as required by § 273.14(a), the education plan prepared by the prospective contractor shall:

(a) Contain educational goals and objectives which adequately address the educational needs of the Indian students to be served by the contract.

(b) Incorporate the program or programs developed and approved by the Indian Education Committee(s). As provided in § 273.17(b), changes in such programs must have prior written approval of the Indian Education Committee(s).

(c) Contain procedures for hearing grievances from Indian students, parents, community members, and tribal representatives relating to the program(s) contracted under this part. Such procedures shall provide for adequate advance notice of the hearing.

(d) Identify established State standards and requirements which shall be maintained in operating programs and services contracted under this part.

(e) Describe how the State standards and requirements will be maintained.

(f) Provide that the contractor shall comply in full with the requirements concerning meaningful participation by the Indian Education Committee as required by § 273.4.

(g) Provide that education facilities receiving funds shall be open to visits

and consultations by the Indian Education Committee(s), tribal representatives, Indian parents in the community, and by duly authorized representatives of the Federal and State Governments.

(h) Outline procedures of administrative and fiscal management to be used by the contractor.

(i) Contain justification for requesting funds for operational support. The public school district must establish in its justification that it meets the requirements given in § 273.13(b). The information given should include records of receipt of local, State, and Federal funds.

(j) Include budget estimates and financial information needed to determine program costs to contract for services. This includes, but is not limited to, the following:

(1) State and district average operational cost per pupil.

(2) Other sources of Federal funding the applicant is receiving, the amount received from each, the programs being funded, and the number of eligible Indian students served by such funding.

(3) Administrative costs involved, total number of employees, and total number of Indian employees.

(4) Costs which parents normally are expected to pay for each school.

(5) Supplemental and operational funds outlined in a separate budget, by line item, to facilitate accountability.

(6) Total number of employees for each special program and number of Indian employees for that program.

(k) State the total enrollment of school or district, by age and grade level.

(l) State the eligible Indian enrollment—total and classification by tribal affiliation(s) and by age and grade level.

(m) State the total number of school board members and number of Indian school board members.

(n) List Government equipment needed to carry out the contract.

(o) State the period of contract term requested.

(p) Include the signature of the authorized representative of applicant.

(q) Provide written information regarding:

(1) Program goals and objectives related to the learning needs of potential target students.

(2) Procedures and methods to be used in achieving program objectives, including ways whereby parents, students and communities have been involved in determining needs and priorities.

(3) Overall program implementation including staffing practices, parental and community involvement, evaluation of program results, and dissemination thereof.

(4) Determination of staff and program effectiveness in meeting the stated needs of target students.

§ 273.19 Obtaining application forms.

Application forms, instructions, and related application materials are available from Agency Superintendents, Area Directors and the Commissioner. Use of standard application forms will facilitate processing of applications. However, they are not required if the information required by § 273.20 is given in the application to contract.

§ 273.20 Content of application to contract.

An application for a contract under this part shall be in writing and shall contain the following:

(a) Name, address, and telephone number of the proposed contractor.

(b) Name, address, and telephone number of the tribe(s) to be served by the contract.

(c) Descriptive narrative of the contract proposal.

(d) The education plan required by § 273.14.

(e) A separate budget outlining the Johnson-O'Malley funds for operational support and/or supplemental programs, by line item, to facilitate accountability.

(f) A clear identification of what educational needs the Johnson-O'Malley funds requested for operational support will address.

(g) Documentation of the requirements for operational support in § 273.13(b)(1).

§ 273.21 Tribal request for contract.

(a) An Indian tribal governing body(s) that desires that a contract be

entered into with a tribal organization must so notify the Area Director no later than February 1 preceding the school year for which the contract will be let.

(b) If the tribal governing body's notice is not received by the date given in paragraph (a) of this section, the Area Director may contract with the State, school district, or Indian corporation under this part.

§ 273.22 Application approval officials.

(a) Each Area Director is authorized to approve the contract(s) submitted by the State, school district, or Indian corporation under this part which will provide services to Indian children within the jurisdiction of that Area Office.

(b) When a proposed contract(s) will provide services to Indian children within the jurisdiction of more than one Area Office, the contract must be approved by the Commissioner.

§ 273.23 Submitting application to Area Office.

When services under the proposed contract will be provided to Indian children within the jurisdiction of a single Area Office, the completed application shall be submitted to the Area Director of that Area Office.

§ 273.24 Area Office review and decision.

Upon receiving a contract application, the Area Director shall:

(a) Notify the applicant in writing that the application has been received. This notice shall be made within fourteen (14) days after the Area Office receives the application.

(b) Review the application for completeness and request within 20 days any additional information from the applicant which will be needed to reach a decision.

(c) On receiving an application for operational support, make formal written determination and findings supporting the need for such funds. In arriving at such a determination, the Area Director must be assured that each local education agency has made a good faith effort in computing State and local contributions without regard to funds requested pursuant to this part.

(d) Assess the completed application to determine if the contract proposal is feasible and if the proposal and the application comply with the appropriate requirements of the Johnson-O'Malley Act and of the regulations in this part.

(e) Approve or disapprove the application after fully reviewing and assessing the application and any additional information submitted by the applicant.

(f) Promptly notify the applicant in writing of the decision to approve or disapprove the application. If the application is disapproved, the notice will give the reasons for disapproval and the applicant's right to appeal pursuant to part 2 of this chapter.

§ 273.25 Deadline for Area Office action.

(a) The Area Director shall approve or disapprove an application for a contract within sixty (60) days after the Area Office receives the application and any additional information requested in § 273.24(b). The sixty (60) day deadline can be extended after obtaining the written consent of the applicant.

(b) An application under this part cannot be approved before February 1 preceding the school year for which the contract will be let.

§ 273.26 Submitting application to Central Office.

When services under the proposed contract will be provided to Indian children within the jurisdiction of two or more Area Offices, the completed application shall be submitted to the Commissioner through the respective Area Offices.

§ 273.27 Central Office review and decision.

Upon receiving a contract application, the Commissioner shall:

(a) Notify the applicant in writing that the application has been received. This notice shall be made within fourteen (14) days after the Central Office receives the application.

(b) Review the application for completeness and request within 20 days any additional information from the

applicant which will be needed to reach a decision.

(c) On receiving an application for operational support, make formal written determination and findings supporting the need for such funds. In arriving at such a determination, the Commissioner must be assured that each local education agency has made a good faith effort in computing State and local contributions without regard to funds requested pursuant to this part.

(d) Assess the completed application to determine if the contract proposal is feasible and if the proposal and the application comply with the appropriate requirements of the Johnson-O'Malley Act and of the regulations in this part.

(e) Approve or disapprove the application after fully reviewing and assessing the application and any additional information submitted by the applicant.

(f) Promptly notify the applicant in writing of the decision to approve or disapprove the application. If the application is disapproved, the notice will give the reasons for disapproval and the applicant's right to appeal pursuant to part 2 of this chapter.

§273.28 Deadline for Central Office action.

(a) The Commissioner shall approve or disapprove an application for a contract within sixty (60) days after the Central Office receives the application, and any additional Information requested in §273.27(b). The sixty (60) day deadline can be extended after obtaining the written consent of the applicant.

(b) An application under this part cannot be approved before February 1 preceding the school year for which the contract will be let.

§273.29 Negotiating the contract.

After the proposal for a contract has been approved by the Area Director or Commissioner as provided in §273.22, the contract will be negotiated by a Bureau contracting officer assisted by Bureau education personnel.

Subpart C—Funding Provisions

§273.31 Distribution formula.

(a) Funds shall be distributed to eligible contractors based upon the number of eligible Indian students to be served times twenty-five (25%) percent of the higher of the State or national average per pupil operating cost. Notwithstanding any other provisions of the law, Federal funds appropriated for the purpose shall be allotted pro rata in accordance with the distribution method outlined in this formula.

(b) The Assistant Secretary may make exceptions to the provisions of paragraph (a) of this section based on the special cultural, linguistic, social or educational needs of the communities involved including the actual cost of education in the community only after consultation with all tribes who may be affected by such exceptions.

(25 U.S.C. 452–456; sec. 202, Pub. L. 93–638, 88 Stat. 2203, and Pub. L. 95–561, sec. 1102 (a) and (b))

[45 FR 9241, Feb. 11, 1980]

§273.32 Pro rata requirement.

All monies provided by a contract pursuant to this part, shall be expended only for the benefit of eligible Indian students. Where students other than eligible Indian students participate in programs contracted under this part, money expended under such contract shall be prorated to cover the participation of only the eligible Indian students, except where the participation of non-eligible students is so incidental as to be de minimus. Such de minimus participation must be approved by the Indian Education Committee.

§273.33 Use of funds for operational support.

All funds for school operational support shall be used to meet established State educational standards or Statewide requirements.

§273.34 Use of other Federal, State and local funds.

(a) Contract funds under this part shall supplement, and not supplant,

Federal, State and local funds. Each contract shall require that the use of these contract funds will not result in a decrease in State, local, or Federal funds which would be made available for Indian students if there were no funds under this part.

(b) State, local and other Federal funds must be used to provide comparable services to non-Indian and Indian students prior to the use of contract funds.

(c) Except as hereinafter provided, the school lunch program of the United States Department of Agriculture (USDA) shall constitute the only federally-funded school lunch program for Indian students in public schools. Where Indian students do not qualify to receive free lunches under the National School Lunch Program of USDA because such students are non-needy and do not meet the family size and income guidelines for free USDA lunches, plans prepared pursuant to § 273.18 may provide, to the extent of funding available for Johnson-O'Malley programs, for free school lunches for those students who do not qualify for free USDA lunches but who are eligible students under § 273.12.

[47 FR 57275, Dec. 23, 1982]

§ 273.35 Capital outlay or debt retirement.

In no instance shall contract funds provided under this part be used as payment for capital outlay or debt retirement expenses; except that, such costs are allowable if they are considered to be a part of the full per capita cost of educating eligible Indian students who reside in Federal boarding facilities for the purpose of attending public schools.

§ 273.36 Eligible subcontractors.

No contract funds under the Johnson-O'Malley Act shall be made available by the Bureau directly to other than tribal organizations, States, school districts and Indian corporations. However, tribal organizations, States, school districts, and Indian corporations receiving funds under this part may use the funds to subcontract for necessary services with any appropriate individual, organization or corporation.

§ 273.37 Use of funds outside of schools.

Nothing in these regulations shall prevent the Commissioner from contracting with Indian corporations who will expend all or part of the funds in places other than the public or private schools in the community affected.

§ 273.38 Equal quality and standard of education.

Contracts with State education agencies or school districts receiving funds under the provisions of this part shall provide educational opportunities to all Indian children within that school district on the same terms and under the same conditions that apply to all other students provided that it will not affect the rights of eligible Indian children to receive benefits from the supplemental programs as provided for in this part. School districts receiving funds under this part must insure that Indian children receive all aid from the State, and other proper sources other than this contract, which other schools in the district and other school districts similarly situated in the State are entitled to receive. In no instance shall there be discrimination against Indians or schools enrolling such Indians.

Subpart D—General Contract Requirements

§ 273.41 Special program provisions to be included in contract.

All contracts under this part shall contain the following:

(a) The education plan required by §§ 273.14 and 273.18 and, as part of the education plan, the education programs approved by the Indian Education Committee(s) under § 273.17.

(b) Any formal written determination and findings made by the Area Director or Commissioner supporting the need for operational support as required by §§ 273.24(c) and 273.27(c).

(c) The provision that State, local, and other Federal Funds shall be used to provide comparable services to non-Indian and Indian students prior to the use of Johnson-O'Malley funds for the provision of supplementary program services to Indian children, as required in § 273.34(b).

§ 273.42 Civil Rights Act violations.

In no instance shall there be discrimination against Indians or schools enrolling such Indians. When informed by a complainant or through its own discovery that possible violation of title VI of the Civil Rights Act of 1964 exists within a State school district receiving funds under this part, the Department of the Interior shall, in accordance with Federal requirements, notify the Department of Health, Education, and Welfare of the possible violation of title VI. The Department of Health, Education, and Welfare will conduct an investigation into the matters alleged, pursuant to a Memorandum of Understanding between the Department of the Interior and the Department of Health, Education, and Welfare. If the report of the investigation conducted by the Department of Health, Education, and Welfare discloses a failure or threatened failure to comply with this part, and if the noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to contract or to continue financial assistance under the Johnson-O'Malley Act or by any other means authorized by law. As delineated in 43 CFR 17.1, 17.8, and 17.9, such other means may include reference to the Department of Justice with a recommendation that appropriate legal proceedings be brought by the United States to secure compliance or by formal hearing before the Commissioner or, at his discretion, before an administrative law judge designated in accordance with section 11 of the Administrative Procedure Act. The Secretary, may, by agreement with one or more other Federal departments, provide for the conduct of consolidated or joint hearings as prescribed in 43 CFR 17.8(e).

§ 273.43 Advance payments.

Advance payments to States, school districts and Indian corporations will be made in accordance with the applicable provisions of 41 CFR part 1 as supplemented by 41 CFR part 14 and 41 CFR part 14H except 41 CFR part 14H–70.

§ 273.44 Use and transfer of Government property.

(a) The use of Government-owned facilities for school purposes may be authorized when not needed for Government activities. Transfer of title to such facilities (except land) may be arranged under the provisions of the Act of June 4, 1953 (67 Stat. 41) subject to the approval of the tribal government if such property is located on a reservation.

(b) In carrying out a contract made under this part, the Area Director or Commissioner may, with the approval of the tribal government, permit a contractor to use existing buildings, facilities, and related equipment and other personal property owned by the Bureau within his jurisdiction under terms and conditions agreed upon for their use and maintenance. The property at the time of transfer must conform to the minimum standards established by the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651). Use of Government property is subject to the following conditions:

(1) When nonexpendable Government property is turned over to public school authorities or Indian corporations under a use permit, the permittee shall insure such property against damage by flood, fire, rain windstorm, vandalism, snow, and tornado in amounts and with companies satisfactory to the Federal officer in charge of the property. In case of damage or destruction of the property by flood, fire, rain, windstorm, vandalism, snow or tornado, the insurance money collected shall be expended only for repair or replacement of property. Otherwise, insurance proceeds shall be paid to the Bureau.

(2) If the public school authority is self-insured and can present evidence of that fact to the Area Director or Commissioner, insurance for lost or damaged property will not be required. However, the public school authority will be responsible for replacement of such lost or damaged property at no cost to the Government or for paying the Government enough to replace the property.

(3) The permittee shall maintain the property in a reasonable state of repair

consistent with the intended use and educational purposes.

(c) The contractor may have access to existing Bureau records needed to carry out a contract under this part, as follows:

(1) The Bureau will make the records available subject to the provisions of the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93–502, 88 Stat. 1561).

(2) The contractor may have access to needed Bureau records at the appropriate Bureau office for review and making copies of selected records.

(3) If the contractor needs a small volume of identifiable Bureau records, the Bureau will furnish the copies to the contractor.

§ 273.45 Indian preference.

(a) Any contract made by the Bureau with a State, school district or Indian corporation shall provide that the contractor shall, to the greatest extent feasible, give preference in and opportunities for employment and training to Indians.

(b) Any contract made by the Bureau with a State, school district or Indian corporation shall provide that the contractor shall, to the greatest extent feasible, give preference in the award of subcontracts to Indian organizations and Indian-owned economic enterprises.

(c) All subcontractors employed by the contractor shall, to the extent possible, give preference to Indians for employment and training and shall be required to include in their bid submission a plan to achieve maximum use of Indian personnel.

(d) In the performance of contracts under this part 273 and subject to the provisions of part 14H of title 41, a tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a), (b) and (c) of this section.

§ 273.46 Liability and motor vehicle insurance.

(a) States, school districts and Indian corporations shall obtain public liability insurance under contracts entered into with the Bureau under this part. However, where the Bureau contracting officer determines that the risk of death, personal injury or property damage under the contract is small and that the time and cost of procuring the insurance is great in relation to the risk, the contractor may be exempted from this requirement.

(b) Notwithstanding paragraph (a) of this section, any contract which requires or authorizes, either expressly or by implication, the use of motor vehicles must contain a provision requiring the State, school district, or Indian corporation to provide liability insurance, regardless of now small the risk.

(c) If the public school authority is self-insured and can present evidence of that fact to the Area Director or Commissioner, liability and motor vehicle insurance will not be required.

§ 273.47 Recordkeeping.

A contractor will be required to maintain a recordkeeping system which will allow the Bureau to meet its legal records program requirements under the Federal Records Act (44 U.S.C. 3101 et seq.). Such a record system shall:

(a) Fully reflect all financial transactions involving the receipt and expenditure of funds provided under the contract in a manner which will provide accurate, current and complete disclosure of finanical status; correlation with budget or allowable cost schedules; and clear audit facilitating data.

(b) Reflect the amounts and sources of funds other than Bureau contract funds which may be included in the operation of the contract.

(c) Provide for the creation, maintenance and safeguarding of records of lasting value, including those involving individual rights, such as permanent records and transcripts.

(d) Provide for the orderly retirement of permanent records in accordance with General Records Schedules and the Bureau Records Control Schedule, when there is no established system set up by the State, school district, or Indian corporation.

§ 273.48 Audit and inspection.

(a) During the term of a contract under this part and for three years after the project or undertaking is completed, the Comptroller General and the Secretary, or any of their duly authorized representatives, shall have access, for audit and examination purposes, to any of the contractor's books, documents, papers, and records which, in their opinion, may be related or pertinent to the contract or any subcontract.

(b) The contractor will be responsible for maintaining all documents such as invoices, purchase orders, canceled checks, balance sheets and all other records relating to financial transactions in a manner which will facilitate auditing. The contractor will be responsible for maintaining files of correspondence and other documents relating to the administration of the contract properly separated from general records or cross-referenced to general files.

(c) The contractor receiving funds under this part shall be responsible for contract compliance.

(d) The records involved in any claim or expenditure that has been questioned shall be further maintained until final determination has been made on the questioned expenditures.

(e) All contracts, non-confidential records concerning all students served by the program, reports, budgets, budget estimates, plans, and other documents pertaining to preceding and current year administration of the contract program shall be made available by the contractor and local school officials to each member of the Indian Education Committee and to members of the public upon request. The contractor or local school official shall provide, free of charge, single copies of such documents upon request.

§ 273.49 Freedom of information.

(a) Unless otherwise required by law, the Bureau shall not place restrictions on contractors which will limit public access to the contractor's records except when records must remain confidential.

(b) A contractor under this part shall make all reports and information concerning the contract available to the Indian people which the contract affects. Reports and information may be withheld from disclosure only when both of the following conditions exist:

(1) The reports and information fall within one of the following exempt categories:

(i) Specifically required by statute or Executive Order to be kept secret.

(ii) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

(iii) Personnel, medical, social, psychological, academic achievement and similar files where disclosure would be a clearly unwarranted invasion of personal privacy.

(2) Disclosure is prohibited by statue or Executive Order or sound grounds exist for using the exemption given in paragraph (b)(1) of this section.

(c) A request to inspect or copy reports and information shall be in writing and must reasonably describe the reports and information requested. The request may be delivered or mailed to the contractor. Within ten (10) working days after receiving the request, the contractor shall determine whether to grant or deny the request. The requester shall be notified immediately of the determination.

(d) The time limit for making a determination may be extended up to an additional ten (10) working days for good reason. The requester shall be notified in writing of the extension, reasons for the extension, and date on which the determination is expected to be made.

§ 273.50 Annual reporting.

(a) A contractor under this part shall make a detailed annual report to the approving official before September 15 of each year and covering the previous school year. The report shall include, but not be limited to, an accounting of the amounts and purposes for which the contract funds were expended, information on the conduct of the program, a quantitative evaluation of the effectiveness of the contract program in meeting the stated objectives contained in the applicant's educational plans, and a complete accounting of actual receipts at the end of the contract period.

(b) In addition to the yearly reporting requirement given in paragraph (a) of this section, the contractor shall furnish other contracted-related reports when and as required by the Area Director or Commissioner.

(c) A contractor under this part shall send copies of the reports required by paragraphs (a) and (b) of this section to the Indian Education Committee(s) and to the tribe(s) under the contract at the same time as the reports are sent to the Bureau.

§ 273.51 Penalties.

If any officer, director, agent, or employee of, or connected with, any contractor or subcontractor under this part embezzles, willfully misapplies, steals, or obtains by fraud any of the funds or property connected with the contract or subcontract, he shall be subject to the following penalties:

(a) If the amount involved does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) If the amount involved exceeds $100, he shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

§ 273.52 State school laws.

In those States where Pub. L. 83–280, 18 U.S.C. 1162 and 28 U.S.C. 1360 do not confer civil jurisdiction, State employees may be permitted to enter upon Indian tribal lands, reservations, or allotments if the duly-constituted governing body of the tribe adopts a resolution of consent for the following purposes:

(a) Inspecting school conditions in the public schools located on Indian tribal lands, reservations, or allotments.

(b) Enforcing State compulsory school attendance laws against Indian children, parents or persons standing in *loco parentis.*

§ 273.53 Applicable procurement regulations.

States, school districts, or Indian corporations wanting to contract with the Bureau under this part must comply with the applicable requirements in the Federal Procurement Regulations (41 CFR part 1), as supplemented by the Interior Procurement Regulations (41 CFR part 14), and the Bureau of Indian Affairs Procurement Regulations (41 CFR part 14H), except 41 CFR part 14H–70.

§ 273.54 Privacy Act requirements.

(a) When a contractor operates a system of records to accomplish a Bureau function, the contractor shall comply with subpart D of 43 CFR part 2 which implements the Privacy Act (5 U.S.C. 552a). Examples of the contractor's responsibilities are:

(1) To continue maintaining those systems of records declared by the Bureau to be subject to the Privacy Act as published in the FEDERAL REGISTER.

(2) To make such records available to individuals involved.

(3) To disclose an individual's record to third parties only after receiving permission from the individual to whom the record pertains. 43 CFR 2.56 lists exceptions to this procedure.

(4) To establish a procedure to account for access, disclosures, denials, and amendments to records.

(5) To provide safeguards for the protection of the records.

(b) The contractor may not:

(1) Discontinue or alter any established systems of records without prior approval of the appropriate Bureau systems manager.

(2) Deny requests for notification or access of records without prior approval of the appropriate Bureau systems manager.

(3) Approve or deny requests for amendments of records without prior approval of the appropriate Bureau systems manager.

(4) Establish a new system of records without prior approval of the Department of Interior and the Office of Management and Budget.

(5) Collect information about an individual unless it is relevant or necessary to accomplish a purpose of the Bureau as required by statue or Executive Order.

(c) The contractor is subject to the penalties provided in section (i) of 5 U.S.C. 552a.

Subpart E—Contract Revision or Cancellation

§273.61 Contract revision or amendment.

Any contract made under this part may be revised or amended as deemed necessary to carry out the purposes of the program being contracted. A contractor may make a written request for a revision or amendment of a contract to the Bureau contracting officer. However, no program approved by the Indian Education Committee shall be altered from the time of its original approval to the end of the contract period without the written approval of the Committee.

§273.62 Cancelling a contract for cause.

(a) Any contract entered into under this part may be cancelled for cause when the contractor fails to perform the work called for under the contract or fails to permit an Indian Education Committee to perform its duties pursuant to this part.

(b) Before cancelling the contract, the Bureau will advise the contractor in writing of the following:

(1) The reasons why the Bureau is considering cancelling the contract.

(2) The contractor will be given an opportunity to bring its work up to an acceptable level.

(c) If the contractor does not overcome the deficiencies in its contract performance, the Bureau shall cancel the contract for cause. The Bureau will notify the contractor, in writing, of the cancellation. The notice shall give the reasons for the cancellation and the right of the contractor to appeal under subpart C of 43 CFR part 4.

(d) When a contract is cancelled for cause, the Bureau will attempt to perform the work by another contract.

(e) Any contractor that has a contract cancelled for cause must demonstrate that the cause(s) which led to the cancellation have been remedied before it will be considered for another contract.

Subpart F—Appeals

§273.71 Contract appeal.

A contractor may appeal an adverse decision or action of a Bureau contracting officer regarding a contract under this part as provided in subpart C of 43 CFR part 4.

§273.72 Appeal from decision to cancel contract for cause.

A contractor may appeal the decision of a Bureau official to cancel a contract under this part for cause. The appeal shall be made as provided in subpart C of 43 CFR part 4.

§273.73 Other appeals.

Any decision or action taken by a Bureau official under this part, other than those given in §§273.71 and 273.72, may be appealed as provided in part 2 of this chapter.

PART 275—STAFFING

Sec.
275.1 Purpose and scope.
275.2 Definitions.
275.3 Methods for staffing.
275.4 Implementing regulations.

AUTHORITY: Sec. 502, Pub. L. 91–648, 84 Stat. 1909, 1925 (42 U.S.C. 4762); Sec. 105, Pub. L. 93–638, 88 Stat. 2203, 2208–2210 (25 U.S.C. 450i); 26 U.S.C. 48.

SOURCE: 40 FR 51316, Nov. 4, 1975, unless otherwise noted.

§275.1 Purpose and scope.

The purpose of this part is to outline methods available to tribes for utilizing the services of Bureau employees. These regulations are not intended to prevent an Indian tribe or tribal organization from staffing their programs by other methods they feel appropriate. However, when an Indian tribe or tribal organization decides to provide Bureau employees certain Federal benefits, Civil Service Commission regulations must be adhered to.

§275.2 Definitions.

As used in this part:

(a) ''Act'' means the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, 88 Stat. 2203).

(b) ''Area Director'' means the official in charge of a Bureau of Indian Affairs Area Office.

(c) ''Bureau'' means the Bureau of Indian Affairs.

(d) ''Commissioner,'' means the Commissioner of Indian Affairs, under the direction and supervision of the Assistant Secretary—Indian Affairs, who is responsible for the direction of the day-to-day operations of the Bureau of Indian Affairs.

(e) ''Days'' means calendar days.

(f) ''Indian tribe'' means any Indian tribe, band, nation, rancheria, pueblo, colony, or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the U.S. Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(g) ''Indian'' means a person who is a member of an Indian tribe.

(h) ''Superintendent'' means the official in charge of a Bureau of Indian Affairs Agency Office.

(i) ''Tribal Chairman'' means tribal chairman, governor, chief or other person recognized by the tribal government as its chief executive officer.

(j) ''Tribal government'' ''tribal governing body,'' and ''tribal council'' means the recognized governing body of any Indian tribe.

(k) ''Tribal organization'' means the recognized governing body of any Indian tribe; or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

(l) ''Assistant Secretary—Indian Affairs'' means the Assistant Secretary—Indian Affairs who discharges the authority and responsibility of the Secretary for activities pertaining to Indians and Indian affairs.

[40 FR 51316, Nov. 4, 1975, as amended at 43 FR 37446, Aug. 23, 1978; 45 FR 13452, Feb. 29, 1980]

§ 275.3 Methods for staffing.

(a) An Indian tribal organization may use any of the following three methods to employ or obtain the services of Bureau employees:

(1) Agreement in accordance with the Intergovernmental Personnel Act of 1970 (5 U.S.C. 3371–3376). The agreement may be arranged between the tribal organization, the employee, and the Area Director or Commissioner. Assistance will be provided by the Area Personnel Office in complying with Civil Service instructions (Federal Personnel Manual Chapter 334) for completing an agreement.

(2) Employment of Bureau employees on or before December 31, 1985, when serving under an appointment not limited to one year or less. A mutual agreement will be made between a tribal organization and the employee before leaving Federal employment to retain coverage for any of the following Federal benefits:

(i) Compensation for work injuries.

(ii) Retirement.

(iii) Health insurance.

(iv) Life insurance.

(3) An agreement by an Indian tribe in accordance with the 1834 Act (25 U.S.C. 48) may be made in connection with contracts under section 102 of the Act.

(i) The agreement may provide for the tribal government to direct the day-to-day activities of Bureau employees. Tribal government direction of Bureau employees means the tribal chairman or other tribal official, as designated by the tribal governing body, is responsible for the planning, coordination, and completion of the daily on-the-job assignments of Bureau employees. The daily assignments of each such Bureau employee are limited to those that fall within the general range of duties prescribed in the employee's Bureau position.

(ii) The agreement to direct day-to-day activities of Bureau employees shall include all employees:

(A) Whose positions are in the program or portion of the program to be contracted; or

(B) In a portion of the program to continue under Bureau operation in connection with a contract for other portions of the program.

(iii) The proposed agreement will be worked out between the tribe, the Superintendent, and the Area Director and forwarded to the Commissioner for final approval.

(b) When a contract application under part 271 of this chapter does not include a proposed agreement for direction of Bureau employees, the application must be submitted at least 120 days in advance of the proposed effective date of the contract to allow time for placement of affected employees.

[40 FR 51316, Nov. 4, 1975, as amended at 41 FR 5098, Feb. 4, 1976]

§275.4 Implementing regulations.

Regulations to implement section 105 of the Act will be issued by the Civil Service Commission. The regulations will cover the situations described in paragraphs (a)(1) and (a)(2) of §275.3.

PART 276—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS

Sec.

276.1 Purpose and scope.
276.2 Definitions.
276.3 Cash depositories.
276.4 Bondings and insurance.
276.5 Recordkeeping.
276.6 Program income.
276.7 Standards for grantee financial management system.
276.8 Financial reporting requirements.
276.9 Monitoring and reporting program performances.
276.10 Grant payment requirements.
276.11 Property management standards.
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276.13 Indian preference in grant administration.
276.14 Budget revision.
276.15 Grant closeout.
276.16 Subgrants and subcontracts to nonprofit organizations.
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APPENDIX A TO PART 276—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS

APPENDIX B TO PART 276—FINANCIAL REPORTING REQUIREMENTS

AUTHORITY: 34 CFR 256; Sec. 104, Pub. L. 93–638, 88 Stat. 2203, 2207 (25 U.S.C. 450h).

SOURCE: 40 FR 51316, Nov. 4, 1975, unless otherwise noted.

§276.1 Purpose and scope.

(a) The purpose of the regulations in this part is to give the uniform administrative requirements for grants awarded by the Bureau of Indian Affairs.

(b) The regulations in this part shall apply to all grants awarded by the Bureau of Indian Affairs unless the part which gives the application process and special requirements for the specific type of grant states otherwise.

§276.2 Definitions.

As used in this part:

(a) ''Advance by Treasury check'' means a payment made by a Treasury check to a grantee upon its request or through the use of predetermined payment schedules before payments are made by the grantee.

(b) ''Date of completion'' means the date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

(c) ''Disallowed costs'' means those charges to a grant which the Bureau or its representative determines to be unallowable.

(d) ''Economic enterprise'' means any commercial, industrial, agricultural or business activity that is at least 51 percent Indian owned, established or organized for the purpose of profit.

(e) ''Excess property'' means property under the control of the Bureau which, as determined by the Commissioner, is no longer required for its needs.

(f) ''Expendable personal property'' means all tangible personal property other than nonexpendable property.

(g) ''Grant closeout'' means the process by which the Bureau determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the Bureau.

(h) ''Grantee'' means the entity which is responsible for administration of the grant.

(i) ''Indian tribe'' means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any

Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(j) ''Letter of credit'' means an instrument certified by an authorized official of the Bureau which authorizes a grantee to draw funds when needed from the Treasury, through a Regional Disbursing Office, in accordance with the provisions of Treasury Circular No. 1075 as modified and supplemented by a memorandum of understanding between the Bureau of Government Financial Operation, Department of the Treasury and the Department of the Interior.

(k) ''Nonexpendable personal property'' means tangible personal property having useful life of more than one year and an acquisition cost of $300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

(l) ''Personal property'' means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

(m) ''Real property'' means land, land improvements, structures and appurtenances thereto, excluding removable personal property, machinery and equipment.

(n) ''Reimbursement by Treasury check'' means a payment made to a grantee with a Treasury check upon request for reimbursement from the grantee.

(o) ''Suspension of a grant'' means an action by the Bureau which temporarily suspends assistance under the grant pending corrective action by the grantee or pending decision to terminate the grant by the Bureau.

(p) ''Termination of a grant'' means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of completion.

(q) ''Tribal government'', ''tribal governing body'' and ''tribal council'' means the recognized governing body of an Indian tribe.

(r) ''Tribal organization'' means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or bodies of which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

§ 276.3 Cash depositories.

(a) Except for situations described in paragraphs (b) and (c) of this section, the Bureau will not:

(1) Require physical segregation of cash depositories for Bureau grant funds provided to a grantee.

(2) Establish any eligibility requirements for cash depositories in which Bureau grant funds are deposited by grantees or their subgrantees.

(b) A separate bank account shall be used when payments under letter of credit are made on a ''check-paid'' basis in accordance with agreements entered into by a grantee, the Bureau, and the banking institutions involved. A check-paid basis letter of credit is one under which funds are not drawn from the Treasury until the grantee's checks have been presented to its bank for payment.

(c) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees are encouraged to use minority banks.

§ 276.4 Bondings and insurance.

In administering Bureau grants, grantees shall observe their regular requirements and practices with respect to bonding and insurance. The Bureau will not impose additional bonding and insurance requirements, including fidelity bonds, except as provided in paragraphs (a) and (b) of this section.

(a) The recipient of a Bureau grant which requires contracting for construction or facility improvement (including any Bureau grant which provides for alterations or renovations of real property) shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) A payment bond on the part of the contractor for 100 per cent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(b) Where, in connection with a Bureau grant, the Bureau also guarantees the payment of money borrowed by the grantee, the Bureau may at its discretion require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed to be sufficient to protect adequately the interests of the Federal Government.

§ 276.5 Recordkeeping.

(a) The Bureau shall not impose record retention requirements over and above those established by the grantee except that financial records, supporting documents, statistical records, and all other records pertinent to a Bureau grant, or to any subgrant (or negotiated contract exceeding $2500) under a grant, shall be retained for a period of three years, with the following qualifications:

(1) The records shall be retained beyond the three-year period if audit findings have not been resolved.

(2) Records for nonexpendable property which was acquired with Bureau grant funds shall be retained for three years after its final disposition.

(3) When grant records are transferred to or maintained by the Bureau, the three-year retention requirement is not applicable to the grantee.

(b) The retention period starts from the date of submission of the final expenditure report or, for grants which are renewed annually, from the date of the submission of the annual expenditure report.

(c) Grantees are authorized, if they desire, to substitute microfilm copies in lieu of original records.

(d) The Bureau shall request transfer of certain records to its custody from grantees when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping the Bureau may make arrangements with the grantee for the grantee to retain any records which are continuously needed for joint use.

(e) The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the grantees and their subgrantees which are pertinent to a specific grant program for the purpose of making audit, examination, excerpts, transcripts and copies at government expense.

(f) Unless otherwise required by law, the Bureau shall not place restrictions on grantees which will limit public access to the grantee's records created as part of the grant except when records must remain confidential. Following are some of the reasons for withholding records:

(1) Prevent a clearly unwarranted invasion of personal privacy;

(2) Specifically required by statute or Executive Order to be kept secret;

(3) Commercial or financial information obtained from a person or firm on a privileged or confidential basis.

§ 276.6 Program income.

(a) No grantee receiving a grant shall be held accountable for interest earned on grant funds, pending their disbursement for program purposes.

(b) Proceeds from the sale of real or personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with § 276.11.

(c) Royalties received from copyrights and patents produced under the grant during the grant period shall be retained by the grantee and, in accordance with the grant agreement, be either added to the funds already committed to the program or deducted from total allowable project costs for the purpose of determining the net costs on which the Bureau share of costs will be based. After termination or completion of the grant, the Bureau share of royalties in excess of $200 received annually shall be returned to the Bureau in the absence of other specific agreements between the Bureau and the grantee. The Bureau share of royalties shall be computed on the same ratio basis as the Bureau share of the total project cost.

(d) All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be either:

(1) Added to funds committed to the project by the Bureau and the grantee and be used to further eligible program objectives, or

(2) Deducted from the total project costs for the purpose of determining the net costs on which the Bureau share of costs will be based.

(e) Grantees shall record the receipt and expenditures of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions when such revenues are specifically earmarked for a grant project in accordance with grant agreements.

§ 276.7 Standards for grantee financial management systems.

(a) Grantee financial management systems for grants and subgrantee financial management systems for subgrants shall provide for:

(1) Accurate, current, and complete disclosure of the financial results of each grant program in accordance with Federal reporting requirements and for each subgrant in accordance with the grantees' requirements. Except when specifically required by law, the Bureau wll not require financial reporting on the accrual basis from tribal organizations whose records are not maintained on that basis. However, when accrual reporting is required by law, tribal organizations whose records are not maintained on that basis will not be required to convert their accounting systems to the accrual basis; they may develop the accrual information through an analysis of the documentation on hand or on the basis of best estimates.

(2) Records which identify adequately the source and application of funds for grant—or subgrant—supported activities. These records shall contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(3) Effective control over and accountability for all grant or subgrant funds, and real and personal property acquired with grant or subgrant funds. Grantees and subgrantees shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(4) Comparison of actual with budgeted amounts for each grant or subgrant, and, when specifically required by the performance reporting requirements of the grant or subgrant, relation of financial information with performance or productivity data, including the production of unit cost information.

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the grantees shall make drawdowns from the U.S. Treasury as close as possible to the time of making the disbursements. Subgrantees shall institute similar procedures when funds are advanced by the grantee.

(6) Procedures for determining the allowability and allocability of costs shall be in accordance with the applicable cost principles prescribed in appendix A of this part.

(7) Accounting records which are supported by source documentation.

(8) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(b) Grantees shall require subgrantees (recipients of grants which are passed through by the grantee) to adopt all of the standards in paragraph (a) of this section.

§ 276.8 Financial reporting requirements.

Requirements for grantees to report financial information to the Bureau, and to request advances and reimbursment when a letter of credit method is not used, are prescribed in appendix B of this part.

§ 276.9 Monitoring and reporting program performances.

(a) Grantees shall constantly monitor the performance under grant-supported activities to assure that adequate progress is being made toward achieving the goals of the grant. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application.

(b) Grantees shall submit a performance report for each grant which briefly presents the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons for slippage in those cases were established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) Grantees shall submit the performance reports to the Bureau with the Financial Status Reports (prescribed in appendix B of this part) in the frequency established by appendix B. The Bureau shall prescribe the frequency with which the performance reports will be submitted with the Request for Advance or Reimbursement (prescribed in appendix B) when that form is used in lieu of the Financial Status Report. In no case shall the performance reports be required more frequently than quarterly or less frequently than annually.

(d) Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the grantee shall inform the Bureau as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accomplished by a statement of the action taken, or contemplated, and any Bureau assistance needed to resolve the situation.

(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

(e) If any performance review conducted by the grantee discloses the need for change in the budget estimates in accordance with the criteria established in § 276.14, the grantee shall submit a request for budget revision.

(f) The bureau shall make site visits as frequently as practicable to:

(1) Review program accomplishments and management control systems.

(2) Provide such technical assistance as may be required, or requested.

§ 276.10 Grant payment requirements.

(a) Except for construction grants for which the letter-of-credit method is optional, the letter-of-credit funding method shall be used by the Bureau where all of the following conditions exist:

(1) When there is or will be a continuing relationship between a grantee and the Bureau for at least a 12-month period and the total amount of advances to be received within that period from

the Bureau is $120,000, or more, as prescribed by Treasury Circular No. 1075.

(2) When the grantee has established or demonstrated to the Bureau the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee.

(3) When the grantee's financial management system meets the standards for fund control and accountability prescribed in § 276.7.

(b) The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraphs (a)(2) and (3) of this section.

(c) The reimbursement by Treasury check method shall be the preferred method when the grantee does not meet the requirements specified in either paragraph (a)(2) or (a)(3), or both. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and when the Bureau grant assistance constitutes a minor portion of the program.

(d) Unless otherwise required by law, the Bureau shall not withhold payments for proper charges made by grantees at any time during the grant period unless:

(1) A grantee has failed to comply with the program objectives, grant award conditions, or Bureau reporting requirements; or

(2) The grantee is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States. Under such conditions, the Bureau may, upon reasonable notice, inform the grantee that payments will not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(e) Appendix B of this part provides the procedures for requesting advances or reimbursements.

[40 FR 51316, Nov. 4, 1975, as amended at 41 FR 5099, Feb. 4, 1976]

§ 276.11 Property management standards.

(a) Grantees may follow their own property management policies and procedures if they observe the requirements of this section. With respect to property covered by this section, the Bureau may not impose on grantees any requirements (including property reporting requirements)—not authorized by this part unless specifically required by Federal law.

(b) Title to real property to be acquired in whole or in part from a Bureau grant under part 272 of this chapter shall vest in one of the following manners:

(1) Title may be taken by the United States in trust for the Indian tribe upon the request of the tribe and when the real property to be acquired is within the reservation boundaries or adjoins on at least two sides other trust or restricted lands as prescribed in part 272 of this chapter.

(2) Fee title to the acquired real property shall vest in the Indian tribe whenever the acquisition does not meet the criteria in paragraph (b)(1) of this section, unless for other reasons a tribe requests title to be taken in the name of the United States. In the absence of applicable statutory authority governing the disposition of real property acquired by a tribe, the tribe shall use the real property for the authorized purposes and in accordance with any other requirements imposed by the terms and conditions of the original grant. Changes in use compatible to other tribal programs may be authorized by the Bureau. When no longer needed for the authorized purposes, the real property shall be used in accordance with the standards set forth in § 276.11(d)(1) for non-expendable personal property. Accordingly, the following priority order for use of such property shall be:

(i) Other grants from the Bureau.

(ii) Grants from other Federal agencies.

(iii) Tribal purposes consistent with those authorized for support by Bureau grants.

(iv) Tribal official activities.

(3) In those instances where the Indian tribe requests, title may be acquired by the United States. Use of

these acquired real property interests will be subject to the authorized purposes and in accordance with the provisions of the original grant. Upon a determination that the real property is no longer needed for the authorized purposes, disposition may be made by declaring it excess under provisions of the Act of January 2, 1975 (88 Stat. 1954) and title transferred to the Secretary to be held by the United States in trust for the tribe. Where real property does not meet the requirements under the Act of January 2, 1975 (88 Stat. 1954), the tribe may elect to acquire title under applicable enabling statutory authorities, or in the absence of statutory authority, request withholding disposition in aid of legislation, or authorize disposal under the General Services Administration procedures.

(c) The provisions of paragraphs (b)(2) and (3) of this section shall also apply when real property is acquired in whole or in part by a Bureau grant other than that provided under part 272 of this chapter. However, when such property is acquired by a grantee other than an Indian tribe, or a tribal governing body, fee simple title to the property shall vest in the grantee upon acquisition. In the absence of applicable statutory provisions governing the use or disposition of such property, it shall be subject to the following requirments, in addition to any other requirements imposed by the terms and conditions of the grant:

(1) The grantee shall use the real property for the authorized purpose of the original grant as long as needed.

(2) The grantee shall obtain approval by the Bureau for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

(3) When the real property is no longer needed as provided in paragraphs (c)(1) and (2) of this section, the grantee shall return all real property furnished or purchased wholly with Bureau grant funds to the control of the Bureau. In the case of property purchased in part with Bureau grant funds, the grantee may be permitted to take title to the Federal interest therein upon compensating the Federal Government for its fair share of the property. The Federal share of the property shall be the amount computed by applying the percentage of the Federal participation in the total cost of the grant program for which the property was acquired to the current fair market value of the property.

(d) Standards and procedures governing ownership, use, and disposition of nonexpendable personal property furnished by the Bureau or acquired with Bureau funds are set forth below:

(1) *Nonexpendable personal property acquired with Bureau funds.* When nonexpendable personal property is acquired by a grantee wholly or in part with Bureau funds, title will not be taken by the Bureau except as provided in paragraph (d)(1)(iv) of this section but shall be vested in the grantee subject to the following restrictions on use and disposition of the property:

(i) The grantee shall retain the property acquired with Bureau funds in the grant program as long as there is a need for the property to accomplish the purpose of the grant program whether or not the program continues to be supported by Bureau funds. When there is no longer a need for the property to accomplish the purpose of the grant program, the grantee shall use the property in connection with the other Federal grants it has received in the following order of priority:

(A) Other grants from the Bureau needing the property.

(B) Grants of other Federal agencies needing the property.

(ii) When the grantee no longer has need for the property in any of its Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor, the property may be used for its own official activities in accordance with the following standards:

(A) Nonexpendable property with an acquisition cost of less than $500 and used four years or more. The grantee may use the property for its own official activities without reimbursement to the Federal government or sell the property and retain the proceeds.

(B) All other nonexpendable property. The grantee may retain the property for its own use if a fair compensation is made to the Bureau for the latter's share of the property. The amount of compensation shall be computed by applying the percentage of Bureau participation in the grant program to the current fair market value of the property.

(iii) If the grantee has no need for the property, disposition of the property shall be made as follows:

(A) Nonexpendable property with an acquisition cost of $1,000 or less. Except for that property which meets the criteria of paragraph (d)(1)(ii)(A) of this section, the grantee shall sell the property and reimburse the Bureau an amount which is computed in accordance with paragraph (d)(1)(iii) of this section.

(B) Nonexpendable property with an acquisition cost of over $1,000. The grantee shall request disposition instructions from the Bureau. The Bureau shall determine whether the property can be used to meet the Bureau's requirement. If no requirement exists within the Bureau, the availability of the property shall be reported to the General Services Administration (GSA) by the Bureau to determine whether a requirement for the property exists in other Federal agencies. The Bureau shall issue instructions to the grantee within 120 days and the following procedures shall govern:

(1) If the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee's participation in the grant program to the current fair market value of the property, plus any shipping or interim storage costs incurred.

(*2*) If the grantee is instructed to otherwise dispose of the property, he shall be reimbursed by the Bureau of such costs incurred in its disposition.

(*3*) If disposition instructions are not issued within 120 days after reporting, the grantee shall sell the property and reimburse the Bureau and amount which is computed by applying the percentage of Bureau participation in the grant program to the sales proceeds. Further, the grantee shall be permitted to retain $100 or 10 percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(iv) Where the Bureau determines that property with an acquisition cost of $1,000 or more and financed solely with Bureau funds is unique, different, or costly to replace, it may reserve title to such property, subject to the following provisions:

(A) The property shall be appropriately identified in the grant agreement or otherwise made known to the grantee.

(B) The Bureau shall issue disposition instructions within 120 days after the completion of the need for the property under the grant for which it was acquired. If the Bureau fails to issue disposition instructions within 120 days, the grantee shall apply the standards of paragraphs (d)(1)(i), (d)(1)(ii)(B), and (d)(1)(iii)(B) of this section.

(2) Federally owned nonexpendable personal property. Unless statutory authority to transfer title has been granted to an agency, title to Federally owned property (property to which the Federal Government retains title including excess property made available by the Bureau to grantees) remains vested by law in the Federal Government. Upon termination of the grant or need for the property, such property shall be reported to the Bureau for further Bureau use or, if appropriate, for reporting to the General Services Administration for other Federal agency use. Appropriate disposition instructions will be issued to the grantee after completion of Bureau review.

(e) The grantee's property management standards for nonexpendable personal property shall also include the following procedural requirements:

(1) Property records shall be maintained accurately and provide for a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage of Federal funds used in the purchase of property; location, use, and condition of the property; and ultimate disposition data including sales price or the

method used to determine current fair market value if the grantee reimburses the bureau for its share.

(2) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current use, and continued need for the property.

(3) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

(f) When the total inventory value of any unused expendable personal property exceeds $500 at the expiration of need for any grant purposes, the grantee may retain the property or sell the property as long as he compensates the Bureau for its share in the cost. The amount of compensation shall be computed in accordance with paragraph (d)(1)(ii)(B) of this section.

(g) Specific standards for control of intangible property are provided as follows:

(1) If any program produces patentable items, patent rights, processes, or inventions, in the course of work aided by a Bureau grant, such fact shall be promptly and fully reported to the Bureau. Unless there is prior agreement between the grantee and Bureau on disposition of such items, the Bureau shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued on it—shall be allocated and administered in order to protect the public interest consistent with ''Government Patent Policy'' (President's memorandum for heads of executive departments and agencies), dated August 23, 1971, and Statement of Government Patent Policy as printed in 36 FR 16889.

(2) Where the grant results in a book or other copyrightable material, the author or grantee is eligible to copyright the work if it is found that (i) the retention of the copyright is not precluded by statute and (ii) equity or the public interest is best served by doing so, by reason of special circumstances. If it is found that the public interest is best served by limiting the term of any copyright to be obtained, such limits shall be set forth in the grant agreement. ''Developmental'' copyrights may be requested during the development, testing, or evaluation of copyrightable materials in order to prevent them from prematurely falling into the public domain. The copyright will be in accordance with copyright laws. However, the Government shall receive a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes. A copy of any copyright obtained by a grantee shall be provided to the Bureau. Program income received as royalties from copyrights on materials produced under grants is retained by the grantee during the grant period and is to be used according to the provisions of § 276.6(c). Specific agreements between the Bureau and the grantee shall be entered into before the grant is awarded to determine the uses of the royalty income after the grant is completed or terminated.

(h) The use of Bureau-owned facilities under the jurisdiction of the Commissioner by a grantee for purposes of carrying out a grant may be authorized when the facilities are not needed for Bureau purposes.

[40 FR 51316, Nov. 4, 1975, as amended at 43 FR 37446, Aug. 23, 1978]

§ 276.12 Procurement standards.

(a) The standards contained in this section do not relieve the grantee of the contractual responsibilities arising under its contracts. The grantee is the responsible authority, without recourse to the Bureau regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant. This includes but is not limited to: disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are

to be referred to the tribal, Federal or other authority which has proper jurisdiction.

(b) Grantees may use their own procurement regulations provided that procurements made with Bureau grant funds adhere to the standards set forth as follows:

(1) The grantee shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Bureau grant funds. Grantee's officers, employees or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible by law, rules or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the grantee officers, employees, or agents, or by contractors or their agents.

(2) All procurement transactions regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition. The grantee should be alert to organizational conflicts of interest or non-competitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade. However, this provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(3) The grantee shall establish procurement procedures which provide for, as a minimum, the following procedural requirements:

(i) Proposed procurement actions shall be reviewed by grantee official to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(ii) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, such description shall not contain features which unduly restrict competition. ''Brand name or equal'' description may be used as a means to define the performance or other salient requirements of a procurement. When so used, the specific features of the named brand which must be met by offerors should be clearly specified.

(iii) Positive efforts shall be made by the grantees to use small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed using Bureau grant funds. However, this provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(iv) The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the grant program involved. The ''cost-plus-a-percentage-of-cost'' method of contracting shall not be used.

(v) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (b)(3)(vi) of this section is necessary to accomplish sound procurement. However, procurement of $10,000 or less need not be so advertised. Where such advertised bids are obtained the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the grantee, price and other factors considered. (Factors such as discounts, transportation costs, taxes may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the grantee. Any or all bids may be rejected when it is in the grantee's interest to do so.

(vi) Procurements may be negotiated if it is impractical and unfeasible to use formal advertising. Generally, procurements may be negotiated by the grantee if:

(A) The public exigency will not permit the delay incident to advertising;

(B) The material or service to be procured is available from only one person

or firm; (all contemplated sole source procurements where the aggregate expenditure is expected to exceed $5,000 shall be referred to the Bureau for prior approval).

(C) The total amount involved does not exceed $10,000;

(D) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institutions;

(E) No acceptable bids have been received after formal advertising;

(F) The purchases are for highly perishable materials or medical supplies; for material or services where the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental or research work; for supplies purchased for authorized resale; and for technical or specialized supplies requiring substantial initial investment for manufacture;

(G) Otherwise authorized by law, rules or regulations. Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(vii) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(viii) Procurement records or files for purchases in amounts over $10,000 shall provide at least the following pertinent information: Justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiation.

(ix) A system for contract administration shall be maintained to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely followup of all purchases.

(c) In addition to provisions to define a sound and complete agreement, the grantee shall include the following provisions in all contracts and subgrants:

(1) Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts, amounts for which are over $10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions where the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) In all contracts for construction or facility improvement awarded over $100,000, grantees shall observe the bonding requirements provided in § 276.4.

(4) All construction contracts awarded by recipients and their contractors or subgrantees having a value of more than $10,000, shall contain a provision requiring compliance with Executive Order 11246, entitled ''Equal Employment Opportunity,'' as amended by Labor Regulations (41 CFR part 87). However, this Equal Employment Opportunity provision will apply only after the Indian preference requirements prescribed in § 276.13 have been met.

(5) All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland ''Anti-Kick Back'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the Bureau.

(6) When required by the Federal grant program legislation, all construction contracts awarded by grantees and subgrantees over $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the Bureau.

(7) Where applicable, all contracts awarded by grantees and subgrantees over $2,000 for construction contracts and over $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible if the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked over 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act applies to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or constraints in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Bureau. The contractor shall be advised as to the source of additional information regarding these matters.

(9) All negotiated contracts (except those of $10,000 or less) awarded by grantees shall include a provision to the effect that the grantee, the Bureau, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

(10) Contracts and subgrants of amounts over $100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1251 et seq.) as amended. Violations shall be reported to the Bureau and the Regional Office of the Environmental Protection Agency.

§ 276.13 Indian preference in grant administration.

Any grant or subgrant shall require that to the greatest extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such a grant or subgrant shall be given to Indians.

(b) Preference in the award of a subgrant, contract or subcontract in connection with administration of a grant shall be given to Indian organizations and economic enterprises.

(c) A tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a) and (b) of this section for grants executed under this part.

§ 276.14 Budget revision.

Criteria and procedures to be followed by grantees in reporting deviations from grant budgets and requesting approval for budget revisions are as follows:

(a) For nonconstruction grants, grantees shall request prior approvals promptly from the Bureau for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the grant-supported program.

(2) The revision indicates the need for additional Bureau funding.

(3) The grant budget is over $100,000 and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed $10,000, or five percent of the grant budget, whichever is greater. The same criteria apply to cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the Bureau shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

(4) The grant budget is $100,000, or less, and the cumulative amount of transfers among direct cost object class budget categories exceeds or is expected to exceed five percent of the grant budget. The same criteria apply to the cumulative amount of transfers among programs, functions, and activities when budgeted separately for a grant, except that the Bureau shall permit no transfer which would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

(5) The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs.

(6) The revisions pertain to the addition of items requiring approval in accordance with the provisions of appendix A of this part.

(b) All other changes to nonconstruction grant budgets, except for the changes described in paragraph (d) of this section do not require approval. These changes include:

(1) The use of grantee funds in furtherance of program objectives over and above the grantee minimum share included in the approved grant budget and

(2) The transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

(c) For construction grants, grantees shall request prior approval promptly from the Bureau for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the grant-supported programs.

(2) The revision increases the budgeted amounts of Bureau funds needed to complete the project.

(d) When the Bureau awards a grant which provides support for both construction and nonconstruction work, the Bureau may require, in the grant agreement, the grantee to request prior approval before making any fund or budget transfers between the two types of work supported.

(e) For both construction and nonconstruction grants, the Bureau shall require tribal grantees to notify the Bureau promptly whenever the amount of Bureau authorized funds is expected to exceed the needs of the grantee by more than $5,000 or 5 percent of the Bureau grant, whichever is greater. This notification will not be required when applications for additional funding are submitted for continuing grants.

(f) When requesting approval for budget revisions, grantees shall use the budget forms which were used in the grant application. However, grantees may request by letter the approvals required by the provisions of appendix A of this part.

(g) Within 30 days from the date of receipt of the request for budget revisions, the Bureau shall review the request and notify the grantee whether or not the budget revisions have been approved. If the Bureau does not reach a decision prior to the end of the 30–day period or should the grantee not be notified of the Bureau's decision by the end of the 30-day period the grantee

may appeal directly to the Commissioner.

§ 276.15 Grant closeout.

(a) In closing out Bureau grants, the following shall be observed:

(1) Upon request, the Bureau shall make prompt payments to a grantee for allowable reimbursable costs under the grant being closed out.

(2) The grantee shall immediately refund to the Bureau any unencumbered balance of cash advanced to the grantee.

(3) The Bureau shall obtain from the grantee within 90 days after the date of completion of the grant all financial, peformance, and other reports required as a condition of the grant. The Bureau may grant extensions when requested by the grantee.

(4) The Bureau shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.

(5) The grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of § 276.11.

(6) If a final audit has not been performed before the closeout of the grant, the Bureau shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

(b) *Suspension.* When a grantee has materially failed to comply with the terms and conditions of a grant, the Bureau may after reasonable notice to the grantee, suspend the grant. The notice preceding suspension shall include the effective date of the suspension, the reasons for the suspension, the corrective measures necessary for reinstatement of the grant, and, if there is no immediate threat to safety, a reasonable time frame for corrective action prior to actual suspension. No obligations incurred by the grantee during the period of suspension shall be allowable under the suspended grant, except that the Bureau may at its discretion allow necessary and proper costs which the grantee could not reasonably avoid during the period of suspensions if such costs would otherwise be allowable under the applicable cost principles specified in appendix A of this part. Appropriate adjustments to the payments under the suspended grant will be made, either by withholding the payments or by not allowing the grantee credit for disbursements which he may make in liquidation of unauthorized obligations he incurs during the period of suspension. Suspensions shall remain in effect until the grantee has taken corrective action to the satisfaction of the Bureau or given assurances satisfactory to the Bureau that corrective action will be taken, or until the Bureau cancels the grant.

(c)(1) *Cancellation for cause.* The Bureau may cancel any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has:

(i) Materially failed to comply with the terms and conditions of the grant;

(ii) Violated the rights or endangered the health, safety, or welfare of any persons;

(iii) Been grossly negligent in or has mismanaged the handling or use of funds provided under the grant.

(2) When it appears that cancellation of a grant shall become necessary, the Bureau shall promptly notify the grantee in writing of this possibility. This written notice shall advise the grantee of the reason for the possible cancellation and the corrective action necessary to avoid cancellation. The Bureau shall also offer, and provide if requested by the grantee, any technical assistance which may be required to effect the corrective action. The grantee shall have 60 days in which to effect this corrective action before the Bureau provides notice of intent to cancel the grant as provided in paragraph (c)(3) of this section.

(3) Upon deciding to cancel for cause, the Bureau shall promptly notify the grantee in writing of that decision, the reasons for the cancellation, and the effective date. The Bureau shall also provide a hearing for the grantee before cancellation, as provided in § 272.51. However, the Bureau may immediately cancel the grant, upon notice to the grantee, if the Bureau determines that continuance of the grant poses an immediate threat to safety. In this event, the Bureau shall provide a hearing for the grantee within ten (10) days of cancellation.

(4) Payments made to grantees or recoveries by the Bureau under grants cancelled for cause shall be in accordance with the legal rights and obligations of the parties.

(d)(1) *Cancellation on other grounds.* Except as provided in paragraph (c) of this section, grants may be cancelled in whole or in part only as follows:

(i) By the Bureau with the consent of the grantee, in which case the two parties shall agree upon the cancellation conditions, including the effective date, and in the case of partial cancellation, the portion to be cancelled; or

(ii) By the grantee, upon written notice to the Bureau, setting forth the reasons for the cancellation, the effective date, and, in the case of partial cancellation, the portion to be cancelled.

(2) When a grant is cancelled in accordance with paragraph (d) of this section, the grantee shall not incur new obligations for the cancelled portion after the effective date, and shall cancel as many outstanding obligations as possible. The Bureau shall allow full credit to the grantee for the Bureau share of the noncancellable obligations properly incurred by the grantee before cancellation.

[40 FR 51316, Nov. 4, 1975, as amended at 45 FR 13452, Feb. 29, 1980]

§ 276.16 Subgrants and subcontracts to non-profit organizations.

The uniform administrative requirements in this part, including the cost principles in appendix A, to this part, are applicable to all subgrants or subcontracts made by a grantee in accordance with the provisions of this chapter. However, these requirements and cost principles are applicable as minimum standards for subgrants or subcontracts made to nonprofit organizations. Accordingly, the grantee may prescribe additional or more stringent requirements with regard to subgrants or subcontracts made to non-profit organizations.

§ 276.17 Printing.

As permitted by paragraph 36–2(c) in the Government Printing and Binding Regulations (October 1974, No. 23), published by the Joint Committee on Printing (JCP), printing required by a grantee in performing work under a grant is considered ''incidental printing'' (e.g., material which the grantee needs to use to respond to the terms of the grant). Whenever the incidental printing is likely to exceed the exclusions in paragraphs 36–3 and 36–4 of the Joint Committee on Printing (JCP) Printing and Binding Regulations, specific provisions on printing as may be required shall be included in the grant agreement. Grantees shall be given the option of using sources other than the Government Printing Office for incidental printing.

[43 FR 37446, Aug. 23, 1978]

APPENDIX A TO PART 276—PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS

PART I—GENERAL

A. *Purpose and scope.* 1. *Objectives.* This attachment sets forth principles for determining the allowable costs of programs administered by grantees under grants from the Bureau. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Bureau and tribal participation in the financing of a particular grant. They are designed to provide that Bureau assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. Grantees are responsible for the efficient and effective administration of grant programs through the application of sound management practices.

b. The grantee assumes the responsibility for seeing that Bureau assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied by the Bureau in determining costs incurred by grantees under Bureau grants (including subgrants, contracts by grantees and subcontracts).

B. *Definitions.* 1. *Approval or authorization of the Bureau* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distrtibuting allowable costs under grants and contracts together with the allocation methods used.

3. *Cost,* as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Bureau as a discharge of the grantee's accountability for Bureau funds.

4. *Cost objective* means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. *Federal agency* means any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to grantees.

6. *Grant* means an agreement between the Bureau and a grantee whereby the Bureau provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this Appendix as applicable to grants in general also apply to any Federally sponsored cost reimbursement type of agreement performed by a grantee, including contracts, subcontracts and subgrants.

7. *Grant program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

8. *Grantee* means the entity which is responsible for administration of the grant.

9. *Services,* as used herein, means goods and facilities, as well as services.

10. *Supporting services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

C. *Basic guidelines.* 1. *Factors affecting allowability of costs.* To be allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of a grantee.

b. Be authorized or not prohibited under applicable laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both Federally assisted and other activities of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other Federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.* a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this Appendix may not be shifted to other Federal grant programs to overcome funds deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in Section I.

3. *Applicable credits.* a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Bureau funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use of depreciation of items donated or financed by the Bureau to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. *Composition of cost.* 1. *Total cost.* The total cost of a grant program is comprised of allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect

cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

E. *Direct costs.* 1. *General.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the other ultimate cost objective.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and effort devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

F. *Indirect costs.* 1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term ''indirect costs,'' as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration or relative benefits derived.

2. *Grantee departmental indirect costs.* All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Part. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used:

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.* a. Bureau grants may be subject to laws that limit the amount of indirect costs that may be allowed. In this event, the Bureau will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Appendix, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Appendix the amount not recoverable as indirect costs under a grant may not be shifted to another Federally sponsored grant program or contract.

G. *Cost incurred by organizations other than the grantee.* 1. *General.* The cost of service provided by other organizations may only include allowable direct costs of the service plus a prorata share of allowable supporting costs and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of an organization and his staff assistants not directly involved in operations. However, supervision by the head of an organization whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying organizations.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another organization, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to ten percent of direct labor cost in providing the service performed by another organization (excluding overtime, shift, or holiday

premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in Section F.2.a.

H. *Cost incurred by grantee for others.* 1. *General.* The principles provided in Section G will also be used in determining the cost of services provided by the grantee to another agency.

I. *Cost allocation plan.* 1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee should cover all joint costs of the grantees as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not neessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Bureau, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by grantees in preparation of cost allocation plans.

4. *Submission of indirect cost proposal and negotiation of indirect cost rates.*

a. A grantee should submit its indirect cost proposal to the Federal agency which provides the largest dollar volume of contracts and grants. However, once a Federal agency has handled an indirect cost proposal, that same Federal agency should continue to act upon the proposal even though the preponderance of financial interest may have shifted to another Federal agency, and grantee shall not resubmit its indirect cost proposal to a second Federal agency.

b. Where the grantee submits its proposal to the Department of Interior, the proposal should be sent by the Bureau of Indian Affairs to the cognizant Regional Office of the Department's Office of Audit and Investigation. The Office of Audit and Investigation is responsible for the audit and review of the proposals and negotiation of the indirect cost rates.

c. Grant administrators officers will usually, but are not required to, accept indirect cost rates negotiated by other Federal agencies.

d. The Bureau of Indian Affairs will provide technical assistance in developing indirect cost proposals, if needed.

PART II—STANDARDS FOR SELECTED ITEMS OF COST

A. *Purpose and applicability.* 1. *Objective.* This attachment provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Part I of this Appendix.

B. *Allowable costs.* 1. *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall tribal government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. Solicitation of bids for the procurement of goods and services required.

c. Disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by grantee advisory councils or committees established pursuant to Bureau requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office activity participate in the grantee budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central store's organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services.* a. *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits. The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) Is responsible for the services rendered, (2) follows an appointment made in accordance with tribal government ordinances and rules and which meets Federal merit system or other requirements, where applicable; and (3) is determined and supported as provided in b., below. Compensation for employees engaged in federally assisted actvities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the tribal government. In cases where the kinds of employees required for the federally assisted activities are not found in the other activities of the tribal government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution of time.* Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the tribal government. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowance.* a. Grantees may be compensated for the use of their own buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of whether title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected Federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, provided, however, that reasonable use charges may be negotitated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or

other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in Section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) Provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and in other activities.

14. *Employee morale, health and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred, are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a tribal government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities.* a. *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) The benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books, and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The costs of a service organization which provides automobiles to grantees at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Cost for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the Bureau.

27. *Transportation.* Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-Federally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available.

C. *Costs allowable with approval of the Bureau.* 1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the Bureau as provided under the selected item for capital expenditures. The Bureau must obtain required Departmental clearances before such approval can be given.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the Bureau.

a. *Rental cost.* The rental cost of space in a privately owned building is allowable.

b. *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (Section C.3.) are allowable when specifically approved by the Bureau.

d. *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in Section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by the Bureau.

3. *Capital expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Bureau. When assets acquired with Bureau grant funds are (a) sold, (b) no longer available for use in a Federally sponsored program or (c) used for purposes not authorized by the Bureau, the Bureau's equity in the asset will be refunded in the same proportion as Bureau participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

4. *Insurance and indemnification.* a. Costs of insurance required, or approved and maintained pursuant to the grant agreement, is allowable.

b. Costs of other insurance in connection with the general conduct of activities is allowable subject to the following limitations:

(1) Types and extent and cost of coverage will be in accordance with sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property is unallowable except to the extent that the Bureau has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Bureau are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are available.

e. *Indemnification* includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Bureau is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d. above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee or outside consultants is allowable only when authorized by the Bureau.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant, whether or

not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the grantee is allowable subject to such prior authorization as may be required by the Bureau.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

9. *Tribal government officer salaries and expenses.* Identifiable salary and expense costs incurred as a direct result of a tribal government officer's service to a grant program provided under this chapter are allowable subject to advance agreement with an approval by the Bureau. A general limitation in this regard is prescribed in section D.6.

D. *Unallowable costs.* 1. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainments.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply with Federal, State and local laws and regulations are unallowable.

6. *Tribal officer salaries and expenses.* The salaries and expenses of tribal government officers are considered a cost of general tribal government and are unallowable except as prescribed in Section C.9.

7. *Interest and other financial costs.* Interest on borrowing (however requested), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

8. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

APPENDIX B TO PART 276—FINANCIAL REPORTING REQUIREMENTS

A. *Purpose and scope.* This appendix prescribes requirements for grantee to report financial information to the Bureau and to request advances and reimbursement when a letter-of-credit method is not used.

B. *Definitions.* 1. *Accrued expenditures.* Accrued expenditures are the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employes, contractors, subgrantees, and other payees; and (3) amounts becoming owed under programs for which no current services or performed are required.

2. *Accrued income.* Accrued income is the earnings during a given period which is a source of funds resulting from: (1) Services performed by the grantee; (2) goods and other tangible property delivered to purchasers; and (3) amounts becoming owed to the grantee for which no current services or performance are required by the grantee.

3. *Disbursements.* Disbursements are payments in cash or by check.

4. *Bureau funds authorized.* Funds authorized represent the total amount of the Bureau funds authorized for obligations and establish the ceilings for obligation of Bureau funds. This amount may include any authorized carryover of unobligated funds from prior fiscal years.

5. *Obligations.* Obligations are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

6. *Outlays.* Outlays represent charges made to the grant project or program. Outlays can be reported on a cash or accrued expenditure basis.

7. *Program income.* Program income represents earnings by the grantee realized from the grant-supported activities. Such earnings exclude interest income and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, sale of assets purchased with grant funds, and royalties on patents and copy-rights. Program income can be reported on a cash or accrued income basis.

8. *Unobligated balance.* The unobligated balance is the portion of the funds authorized by the Bureau which has not been obligated by the grantee and is determined by deducting the cumulative obligations from the funds authorized.

9. *Unpaid obligations.* Unpaid obligations represent the amout of obligations incurred by the grantee which have not been paid.

C. *Standard forms.* 1. Only the following forms will be authorized for obtaining financial information from grantees for grant programs:

a. *Financial Status Report.* (1) The Bureau shall require grantees to use a standard Financial Status Report to report the status of funds for all nonconstruction grant programs. The Bureau may, however, have the option of not requiring a Federal Status Report when a request for advance or reimbursement (paragraph 2a) is determined to provide adequate information to meet their needs, except that a final Financial Status Report shall be required at the completion of the grant when the Request for Advance or

Reimbursement form is used only for advances.

(2) The Bureau shall prescribe whether the report shall be on a cash or accrual basis. If the Bureau requires accrual information and the grantee's accouting records are not normally kept on the accrual basis, the grantee should develop such information through an analysis of the documentation on hand or on the basis of best estimates.

(3) The grant agreement shall determine the frequency of the Financial Status Report for each grant program considering the size and complexity of the particular program. However, the report shall not be required more frequently than quarterly or less frequently than annually. Also, a final report shall be required at the completion of the grant.

(4) The original and two copies of the Financial Status Report shall be submitted 30 days after the end of each specified reporting period. In addition, final reports shall be submitted 90 days after the end of the grant period or the completion of the project or program. Extensions to reporting due dates may be approved when requested by the grantee.

b. *Report of federal cash transactions.* (1) When funds are advanced to grantees through letters of credit or with Treasury checks, each grantee shall submit a report of Federal Cash Transactions. The Bureau shall use this report to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant or project from the grantees.

(2) The grant agreement may require forecasts of Federal cash requirement in the Remarks section of the report.

(3) When practical and deemed necessary, the Bureau may require grantees to report in the Remarks section the amount of cash in excess of three days' requirements in the hands of subgrantees or other secondary recipients and to provide short narrative explanations of actions taken by the grantees to reduce the excess balances.

(4) The Bureau shall accept the identical information from the grantees in a machine-usable format in lieu of the Report of Federal Cash Transactions.

(5) Grantees shall submit the original and two copies of the Report of Federal Cash Transactions no later than 15 working days following the end of each quarter. For those grantees receiving annual grants totalling one million dollars or more, the Bureau shall require a monthly report.

(6) The Bureau shall waive the requirement for submission of a Report of Federal Cash Transactions when monthly advances do not exceed $10,000 per grantee provided that such advances are monitored through other forms contained in this Appendix or the grantee's accounting controls are adequate to minimize excessive Federal advances.

2. Except as noted below, only the following forms will be authorized for the grantees in requesting advances and reimbursements.

a. *Request for advance or reimbursement.* (1) The ''Request for Advance or Reimbursement'' form is the standard form for all non-construction grant programs when letters of credit or predetermined automatic advance methods are not used. The Bureau, however, has the option of using this form for construction programs in lieu of an ''Outlay Report and Request for Reimbursement for Construction Programs'' (paragraph 2b) and shall specify in the grant agreement.

(2) Grantees shall be authorized to submit requests for advances or reimbursement at least monthly when letters of credit are not used. Grantees shall submit the original and two copies of a Request for Advance or Reimbursement.

b. *Outlay Report and Request for Reimbursement for Construction Program.* (1) The ''Outlay Report and Request for Reimbursement for Construction Programs'' form is the standard format to be used for requesting reimbursement for construction programs. The Bureau may, however, have the option of substituting a ''Request for Advance or Reimbursement'' form (paragraph 2a) in lieu of this form when the Bureau determines that the former provides adequate information to meet its needs as stated in the grant agreement.

(2) Grantees shall be authorized to submit requests for reimbursement at least monthly when letters of credit are not used. Grantees shall submit the original and two copies of an ''Outlay Report and Request for Reimbursement for Construction Programs'' form.

3. When the Bureau needs additional information in using these forms, the following shall be observed:

a. When necessary to comply with future legislative requirements, the Bureau shall issue instructions to require grantees to submit such information under the Remarks section of the reports.

b. When necessary to meet specific program needs, the Bureau shall submit the proposed reporting requirements to the General Services Administration for approval under the exception provision of this Appendix.

c. The Bureau, in obtaining information as in paragraphs a and b above, must also comply with report clearance requirements of the Office of Management and Budget Circular No. A–40, as revised.

[40 FR 51316, Nov. 4, 1975, as amended at 41 FR 5099, Feb. 4, 1976; 43 FR 37447, Aug. 23, 1978]

SUBCHAPTER N—ECONOMIC ENTERPRISES

PART 286—INDIAN BUSINESS DEVELOPMENT PROGRAM

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AUTHORITY: 25 U.S.C. 1524.

SOURCE: 39 FR 44748, Dec. 27, 1974, unless otherwise noted. Redesignated at 47 FR 13328, Mar. 30, 1982.

EDITORIAL NOTE: Nomenclature changes to part 286 appear at 55 FR 36273, Sept. 5, 1990.

§ 286.1 Definitions.

As used in this part 286:

Area Director means the Bureau of Indian Affairs official in charge of an area office or his authorized representative.

Assistant Secretary means the Assistant Secretary—Indian Affairs of the United States Department of the Interior or the official in the Bureau of Indian Affairs to whom the Assistant Secretary has delegated authority to act on behalf of the Assistant Secretary.

Cooperative Association means an association of individuals organized pursuant to state, Federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

Corporation means an entity organized pursuant to state, Federal, or tribal law, with or without stock, for the purpose of owning and operating an economic enterprise.

Economic enterprise means any Indian-owned, commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 per centum of the enterprise.

Grantee(s) means the recipient(s) of a nonreimburseable grant under this part.

Indian means a person who is a member of an Indian tribe or a person of Alaska Native descent who is a shareholder in a corporation organized under the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Partnership means a form of business organization in which two or more legal persons are associated as co-owners for the purposes of business or professional activities for private pecuniary gain.

Profits means the net income earned after deducting operating expenses from operating revenues.

Reservation means Indian reservation, California rancheria, public domain Indian allotment, former Indian reservation in Oklahoma, and land held by Alaska Native groups incorporated under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688), as amended.

Secretary means the Secretary of the Interior.

Superintendent means the Bureau official in charge of a Bureau agency office or other local office reporting to an Area Director.

Tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or any regional, village, urban or group corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85

Stat. 688) as amended, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

[55 FR 36273, Sept. 5, 1990]

§ 286.2 Purpose.

The purpose of this part 286 is to prescribe the regulations and procedures under which non-reimbursable grants may be made to eligible applicants to stimulate and increase Indian entrepreneurship and employment through establishment, acquisition or expansion of profit-making Indian-owned economic enterprises which will contribute to the economy of a reservation.

§ 286.3 Eligible applicants.

Applications for grants may be accepted only from individual Indians, Indian tribes, Indian partnerships, corporations or cooperative associations authorized to do business under State, Federal, or Tribal law. These applicants must have a form of organization acceptable to the Assistant Secretary and unable to meet their total financing needs from their own resources and by loans from other sources such as banks, Farmers Home Administration, Small Business Administration, Production Credit Associations, and Federal Land Banks. Associations, corporations or partnerships shall be at least fifty-one percent owned by eligible Indians or an eligible Indian tribe. This Indian ownership must actively participate in the management and operation of the economic enterprise by representation on the board of directors of a corporation or cooperative association proportionate to the Indian ownership which will enable the Indian owner(s) to control management decisions. The legal organization documents will provide for the number of Indians which are to be on the board of directors, how they along with other directors will be elected or appointed and qualifications required as a condition for becoming a member of the board of directors. The legal organization documents shall provide safeguards which will prevent Indian ownership and control from decreasing below fifty-one percent. Evidence of Indian ownership in a cooperative association or corporation will be evidenced by stock ownership, if stock is or has been issued, or by other evidence satisfactory to the Assistant Secretary. Partnerships will be evidenced by written partnership agreements which show the percentage of Indian ownership, role and authority in making management decisions in controlling the operation of the economic enterprise.

§ 286.4 Eligible economic enterprises.

An economic enterprise as defined in § 286.1(k) is eligible to receive equity capital through non-reimbursable grants if it is or will be self-sustaining and profit-oriented and will create employment for Indians. In the case of Indian-owned cooperative associations, they must distribute or allocate profits for later distribution, to members who are patrons, unless prohibited from doing so by law.

§ 286.5 Information collection.

(a) The collections of information contained in §§ 286.12 and 286.22 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0093. The information will be used to rate applicants in accordance with the priority criteria listed at 25 CFR 286.8. Response to this request is required to obtain a benefit in accordance with 25 U.S.C. 1521.

(b) Public reporting for this information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Bureau of Indian Affairs, Mailstop 337–SIB, 18th and C Streets, NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1076–0093), Washington, DC 20503.

[55 FR 36273, Sept. 5, 1990]

§ 286.6 [Reserved]

§ 286.7 Location of enterprise.

To be eligible for a grant an economic enterprise must be located on an Indian reservation or located where it makes or will make an economic contribution to a nearby reservation by providing employment to tribal members residing thereon or by expending a portion of its income for materials or services on the reservation. Economic enterprises which are or will be operated on a reservation must comply with the requirements of applicable rules, resolutions or ordinances adopted by the governing body of the tribe, if applicable.

§ 286.8 Priority criteria.

The following priority will be used in selecting economic enterprises for grant funding:

(a) *First priority*. First priority will be given to economic enterprises located on a reservation that will:

(1) Utilize Indian resources, both natural and human.

(2) Create the highest ratio of Indian jobs to the total amount of dollars to be invested, including market value of materials and equipment contributed to the project.

(3) Create the highest ratio of income to a tribe or its members in relation to the total amount of dollars to be invested, including market value of materials or equipment contributed to the project.

(4) Generate the most non-Bureau financing.

(b) *Second priority*. Second priority will be given to projects located in the immediate vicinity of a reservation that will:

(1) Utilize Indian resources, both natural and human.

(2) Create the highest ratio of Indian jobs to the total amount of dollars to be invested, including market value of materials and equipment contributed to the project.

(3) Generate the most non-Bureau financing.

§ 286.9 Environmental and flood disaster protection.

Grant funds will not be advanced until there is assurance of compliance with any applicable provisions of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), the National Environmental Policy Act (Pub. L. 91–190), 42 U.S.C. 4321 and Executive Order 11514.

§ 286.10 Preservation of historical and archeological data.

The Assistant Secretary before approving a grant where the grant funds and/or the loan funds will be used to finance activities involving excavations, road construction, and land development or involving the disturbance of land on known or reported historical or archeological sites, will take appropriate action to assure compliance with applicable provisions of the Act of June 27, 1960 (74 Stat. 220 (16 U.S.C. 469)), as amended by the Act of May 24, 1974 (Pub. L. 93–291, 88 Stat. 174), relating to the preservation of historical and archeological data.

§ 286.11 Management and technical assistance.

(a) Prior to and concurrent with the making of a grant to finance an Indian economic enterprise, the Assistant Secretary—Indian Affairs will insure that competent management and technical assistance is available to the grantee in the preparation of the application for a grant and/or administration of the funds granted, consistent with the grantee's knowledge and experience and the nature and complexity of the economic enterprise being financed. The competence of the management and technical assistance provided will be determined by the local agency superintendent after consultation with the applicant concerning his business needs.

(b) The lender providing the loan funds under § 286.17(b) to finance an economic enterprise will include with the grantee's application the need for equity capital, the lender's evaluation of the applicant's need for management and technical assistance, specific areas of need and whether the lender will provide such assistance to the applicant.

[39 FR 44748, Dec. 27, 1974. Redesignated at 47 FR 13328, Mar. 30, 1982, as amended at 55 FR 36274, Sept. 5, 1990]

§ 286.12 Content of application.

Applications shall be on a form prescribed by the Assistant Secretary which shall at the minimum include:

(a) Total capital requirement, including operating capital required until such time as the cash generated from operations will be sufficient to make the enterprise self-sustaining.

(b) Amount of total financing required as well as what is obtainable from other sources, including the applicant's personal resources, and a statement of terms and conditions under which any borrowed portion is obtainable.

(c) Capital deficiency, which will be the basis for the amount of grant requested.

(d) Pro forma balance sheets and operating statements showing estimated expenses, income and net profit from operations for three years following receipt of the requested grant.

(e) Annual operating statements and balance sheets, audited if available, for the prior two years or applicable years for enterprises already in operation.

(f) Current financial statements, consisting of a balance sheet and operating statement.

(g) A plan of operation which shall be acceptable to the lender making the loan and the Assistant Secretary.

§§ 286.13—286.14 [Reserved]

§ 286.15 Application procedures.

Applications are to be submitted to the Superintendent having administrative jurisdiction over the reservation on which an enterprise will be or is located. If the enterprise site is near two or more reservations, application is to be made to the Superintendent having administrative jurisdiction over the reservation nearest to the location of the enterprise which the enterprise will benefit economically.

§ 286.16 Grant approval authority.

Applications for grants require approval by the Assistant Secretary.

§ 286.17 Grant limitations and requirements.

(a) Grants will be made to assist in establishing new economic enterprises, or in purchasing or expanding established ones. However, a grant may be made only when in the opinion of the Assistant Secretary the applicant is unable to obtain adequate financing from other sources. Prior to making any grant, the Assistant Secretary shall assure that, to the extent practical, the applicant's own resources have been invested in the proposed project. The applicant shall not be required to invest own resources to the extent that they are already committed to endeavors deemed by the Assistant Secretary to be essential to the welfare of the applicant. If the information in an application, which must include personal financial statements, indicates that it may be possible for the applicant to obtain financing without a grant, the Assistant Secretary will require the applicant to furnish letters from two customary lenders in the area, if available, who are making loans for similar purpose, showing whether or not they will make a loan to the applicant for the total financing needed without a grant.

(b) A grant may be made only to an applicant who is able to obtain at least 75 percent of the necessary financing from other sources.

(c) No grant in excess of $250,000 may be made to an Indian tribe or in excess of $100,000 to an Indian individual, partnership, corporation, or cooperative association.

(d) Revolving loan funds as prescribed in title I of the Indian Financing Act of 1974 and guaranteed or insured loans as prescribed in title II of said Act may not be used as the sources of the loan portion of the total financing requirement if financing from other governmental or institutional lenders is available on reasonable terms and conditions. If a loan is not available from other sources, guaranteed or insured loans under the provisions of title II of said Act may then be considered. If a guaranteed or insured loan is not available loans under the provisions of title I of said Act may then be considered. Applicants for a loan from either source must meet the eligibility requirements for such loans.

(e) A grant will not be approved unless there is assurance the applicant can and will be provided with needed competent technical and management

assistance commensurate with the nature of the enterprise to be funded and the knowledge and management skills of the applicant.

(f) Grant funds may not be used for refinancing or debt consolidation unless approval is justified and required due to the applicant's financial position and is clearly to the advantage of the grant applicant.

(g) Ordinarily, not more than one grant will be made for a project. Nevertheless, in certain circumstances a second grant may be made to applicants for a new project or expansion of the original project. An additional grant will not be approved for an economic enterprise previously funded under the provisions of title IV of the Indian Financing Act of 1974 except for expanding a successful enterprise, provided the total of grants made shall not exceed $250,000 to an Indian tribe and $100,000 to an Indian individual, partnership, corporation, or cooperative association.

(h) An application for a second grant will not be approved if the applicant:

(1) Has not complied with the reporting requirements in connection with the first grant, or

(2) Has not followed the plan of operation, if any, developed for the management and operation of the economic enterprise, or

(3) Did not follow and use the management and technical assistance furnished, or

(4) Is in violation of one or more provisions of the loan agreement entered into between the applicant and the lender who furnished the loan portion of the financing in connection with the first grant.

(i) An applicant for an expansion grant must meet the same eligibility requirements as an original applicant.

(j) A grantee will be required to return all or a portion of the grant if the business or enterprise for which the grant was utilized is sold within three years of the date on which the grant was disbursed to the grantee, unless the proceeds from the sale are re-invested in a new business or business expansion which will benefit the Indian reservation economy. Such sale and reinvestment must have the prior approval of the local agency superintendent. The grantee shall refund the lessor of the grant amount or a pro rata portion of sales proceeds. The pro rata portion of sales proceeds shall be based on the ratio of grant amount to its corresponding matching financing. The new business or business expansion utilizing such sale proceeds must meet the same criteria for eligibility as an original grant.

[39 FR 44748, Dec. 27, 1974. Redesignated at 47 FR 13328, Mar. 30, 1982, as amended at 55 FR 36274, Sept. 5, 1990; 56 FR 12436, Mar. 25, 1991]

§ 286.18 Written notice.

The applicant for a grant which is disapproved will be notified by letter, stating the reasons for disapproval and the right of appeal pursuant to 25 CFR 2. A copy of the letter will be sent to the prospective lender.

[39 FR 44748, Dec. 27, 1974. Redesignated at 47 FR 13328, Mar. 30, 1982; 48 FR 13414, Mar. 31, 1983]

§ 286.19 [Reserved]

§ 286.20 Disbursement of grant funds.

Unless otherwise provided by an agreement between a lender and the grantee, the Assistant Secretary may in his discretion advance grant funds directly to a grantee. He may require the funds to be deposited in a special account at the appropriate Agency headquarters office or deposited in a joint account in a bank and disbursed as needed by the grantee. The terms of a lender's loan agreement may require the lender's approval before disbursement of the funds. Grant funds will not be disbursed to a grantee until the Assistant Secretary has been informed by the lender that a loan has been approved for the grantee in the amount of the loan financing needed.

§ 286.21 Return of unused funds.

Grantees will be required to return unused grant funds to the Assistant Secretary if the economic enterprise for which the grant was approved is not initiated, i.e., lease obtained, if needed, construction started, equipment purchased or other, within the time stated in the grant agreement. The Assistant Secretary may, if warranted by circumstances beyond the control of the grantee, extend the time to allow for

initiation of the enterprise, provided there is assurance the enterprise will be initiated forthwith within the extended time period. The Assistant Secretary will notify the lender in writing of a proposed action to require the return of grant funds or of a proposal to extend the time.

§ 286.22 Reports.

(a) Grantees are required to furnish the Assistant Secretary comparative balance sheets and profit and loss statements semi-annually for the first two years of operation following receipt of the grant, and annually thereafter for the succeeding three years. These may be copied of financial statements required by and furnished to the lender which provided the loan portion of the total financing required. If the lender does not require financial statements, the grantee must prepare and furnish copies of comparative balance sheets and profit and loss statements to the Assistant Secretary.

(b) The Assistant Secretary will establish accounting and reporting systems which will appropriately show the status of the Indian Business Development Program at all times.

SUBCHAPTER O—MISCELLANEOUS [RESERVED]

APPENDIX TO CHAPTER I—EXTENSION OF THE TRUST OR RESTRICTED STATUS OF CERTAIN INDIAN LANDS

This appendix contains citations of Executive orders and acts of Congress continuing the trust or restricted period of Indian land, which would have expired otherwise, within the several Indian reservations in the States named. The asterisk to the left of the name of a reservation indicates that the reservation is subject to the benefits of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), as amended, and as therein provided the trust or restricted period of the land is extended indefinitely. Where the name of a reservation is not preceded by an asterisk, such reservation is not subject to the Reorganization Act and is not subject to the benefits of such indefinite trust or restricted period extension, but such reservation is dependent upon acts of Congress or Executive orders for extension of the trust or restricted period of the land.

For the purpose of insuring the continuation of the trust or restricted status of Indian allotments within Indian reservations not subject to the Reorganization Act, Congress by the act of June 15, 1935 (49 Stat. 378) reimposed such restrictions as may have been expired between the dates of June 18, 1934, and December 31, 1936.

State	Reservation	E. O. No.	Date	Period of extension
Arizona	*Papago	2066	Oct. 27,1914	10 years.
Do	.....do	4464	June 28, 1926	Do.
California	Agua Caliente	3446	Apr. 30, 1921	Do.
Do	.....do	5580	Mar. 16, 1931	Do.
Do	Cabazon and Twenty-nine Palms.	3302	July 7, 1920	5 years.
Do	.....do	4159	Feb. 19, 1925	10 years.
Do	*Capitan Grande	3048	Feb. 27, 1919	5 years.
Do	.....do		Act of Feb. 8, 1927 (44 Stat. 1061).	10 years.
Do	Hoopa Valley (Klamath River)	2943	Aug. 23, 1918	1 year.
Do	.....do		Sept. 23, 1919	Do.
Do	.....do	3304	July 10, 1920	10 years.
Do	.....do	3980	Mar. 26, 1924	15 years.
Do	.....do	5416	Aug. 4, 1930	10 years.
	Mission Bands:.			
Do	Augustine	2795	Jan. 26, 1918	Do.
Do	Campo	2795	.....do	Do.
Do	*Cuyapipe	2795	.....do	Do.
Do	Inaja	2795	.....do	Do.
Do	*Laguna	2795	.....do	Do.
Do	*La Posta	2795	.....do	Do.
Do	*Manzanita	2795	.....do	Do.
Do	Mesa Grande	2795	.....do	Do.
Do	Pala	2795	.....do	Do.
Do	Ramona	2795	.....do	Do.
Do	Santa Ysabel	2795	.....do	Do.
Do	Sycuan	2795	.....do	Do.
Do	.....do	3383	Jan. 7, 1921	25 years.
Do	San Manuel	2795	Jan. 26, 1918	10 years.
Do	Temecula	2795	.....do	Do.
Do	All of above Mission Bands	4765	Nov. 23, 1927	Do.
Do	Morongo	6341	Oct. 17, 1933	Do.
Do	Pala	3383	Jan. 7, 1921	25 years.
Do	.....do		Act of Feb. 11, 1936 (49 Stat. 1106).	10 years.
Do	Potrero and Rincon	2684	Aug. 16, 1917	Do.
Do	.....do	4687	July 11, 1927	Do.
Do	*Round Valley	3223	Feb. 5, 1920	3 years.
Do	.....do	3805	Mar. 5, 1923	10 years.
Do	.....do	3995	Apr. 19, 1924	Do.
Do	.....do	5953	Nov. 23, 1932	Do.
Do	Temecula	3699	June 27, 1922	Do.
Do	.....do	5768	Dec. 30, 1931	Do.
Do	Torres-Martinez	7009	Apr. 10, 1935	Do.
Idaho	Nez Perce	3250	Mar. 24, 1920	Do.
Idaho	Nez Perce	4694	July 22, 1927	10 years.
Do	.....do	5305	Mar. 18, 1930	Do.
Kansas and Nebraska	*Iowa	2966	Sept. 23, 1918	Do.
Do	.....do	5023	Jan. 10, 1929	Do.

State	Reservation	E. O. No.	Date	Period of extension
Do	*Sac and Fox	2607	May 4, 1917	Do.
Do	.....do	4571	Jan. 24, 1927	Do.
Do	.....do	5768	Dec. 30, 1931	Do.
Do	Kickapoo	3301	July 3, 1920	1 year.
Do	.....do	3447	May 2, 1921	10 years.
Do	.....do	5415	Aug. 4, 1930	Do.
Do	.....do	5626	May 18, 1931	Do.
Do	*Potawatomi	2747	Nov. 2, 1917	Do.
Do	.....do	2927	July 30, 1918	Do.
Do	.....do	3312	July 21, 1920	Do.
Do	.....do	4688	July 11, 1927	Do.
Do	.....do	4858	Apr. 16, 1928	Do.
Do	.....do	5299	Mar. 10, 1930	Do.
Do	.....do	5356	May 28, 1930	Do.
Do	.....do	5556	Feb. 11, 1931	Do.
Minnesota	*Fond du Lac	3445	Apr. 30, 1921	Do.
Do	.....do	5575	Mar. 12, 1931	Do.
Do	*Grand Portage	3613	Jan. 12, 1922	Do.
Do	.....do	5768	Dec. 30, 1931	Do.
Do	*Winnibigoshish	3614	Jan. 12, 1922	Do.
Do	.....do	5466	Oct. 22, 1930	Do.
Do	.....do	5768	Dec. 30, 1931	Do.
Do	*Deer Creek	4154	Feb. 10, 1925	Do.
Do	*Bois Fort	4233	May 26, 1925	Do.
Do	*Leech Lake, Cass Lake, and White Oak Point.	4298	Aug. 29, 1925	Do.
Do	.....do	5466	Oct. 22, 1930	Do.
Do	*White Earth	4642	May 5, 1927	Do.
Do	.....do	5768	Dec. 30, 1931	Do.
Do	.....do	5953	Nov. 23, 1932	Do.
Do	*Red Lake	5383	June 26, 1930	Do.
Montana	Crow	5301	Mar. 12, 1930	Do.
Do	.....do	5768	Dec. 30, 1931	Do.
Do	.....do	7001	Apr. 5, 1935	Do.
Do	.....do		Act of April 1940 (54 Stat. 106).	To May 23, 1940.
Do	*Flathead	5953	Nov. 23, 1932	Do.
Nebraska	*Omaha		July 3, 1909	Do.
Do	.....do	3111	July 10, 1919	Do.
Do	.....do	4145	Jan. 28, 1925	Do.
Do	.....do	4548	Dec. 4, 1926	Do.
Do	.....do	5148	July 3, 1929	Do.
Do	.....do	5253	Dec. 31, 1929	Do.
Do	*Ponca	2374	Apr. 29, 1916	Do.
Do	.....do	4407	Mar. 30, 1926	Do.
Do	*Santee		Dec. 12, 1910	Do.
Do	.....do	3348	Nov. 5, 1920	Do.
Do	.....do	3722	Aug. 12, 1922	Do.
Do	*Santee Sarah Jones allotment.	4075	Sept. 17, 1924	Do.
Do	*Santee	5474	Oct. 31, 1930	Do.
Do	.....do	5768	Dec. 30, 1931	Do.
Do	.....do	5953	Nov. 23, 1932	Do.
Do	*Winnebago	2965	Sept. 20, 1918	Do.
Do	.....do	4548	Dec. 4, 1926	Do.
Do	.....do	4979	Oct. 16, 1928	Do.
Do	.....do	4994	Nov. 14, 1928	Do.
Do	*Sac and Fox, William Banks allotment.	3878	July 27, 1923	1 year.
Nevada	*Walker River	5730	Oct. 8, 1931	10 years.
North Dakota	Devils Lake	2804	Feb. 11, 1918	Do.
Do	.....do	3853	May 23, 1923	Do.
Do	.....do	4775	Nov. 30, 1927	Do.
Do	.....do	5303	Mar. 12, 1930	Do.
Do	.....do	5768	Dec. 30, 1931	Do.
Do	.....do	5953	Nov. 23, 1932	Do.
Do	*Fort Berthold	4293	Aug. 25, 1925	Do.
Do	*Standing Rock	5768	Dec. 30, 1931	Do.
Do	.....do	5953	Nov. 23, 1932	Do.
Oklahoma	Absentee Shawnee and Citizen Potawatomi.	2494	Nov. 24, 1916	Do.
Do	.....do	2512	Jan. 15, 1917	Do.
Do	.....do	4557	Dec. 23, 1926	Do.

State	Reservation	E. O. No.	Date	Period of extension
Do	Cheyenne and Arapaho	2580	Apr. 4, 1917	Do.
Do	.....do	4587	Feb. 17, 1927	Do.
Do	Eastern Shawnee	2317	Feb. 15, 1916	Do.
Do	.....do	4384	Feb. 20, 1926	Do.
Do	.....do	5768	Dec. 30, 1931	Do.
Do	Mexican Kickapoo	3047	Feb. 27, 1919	5 years.
Do	.....do	4029	June 19, 1924	10 years.
Do	.....do		Act of Feb. 17, 1933 (47 Stat. 819).	Do.
Do	Modoc	2453	Sept. 14, 1916	Do.
Do	.....do	4470	July 1, 1926	Do.
Do	Ottawa, Seneca and Wyandotte.	2591	Apr. 11, 1917	Do.
Do	.....do	4588	Feb. 17, 1927	Do.
Do	Pawnee	2816	Mar. 2, 1918	Do.
Do	.....do	4898	May 29, 1928	Do.
Do	Ponca	3327	Sept. 19, 1920	1 year.
Do	.....do	3363	Dec. 1, 1920	25 years.
Do	.....do	5539	Jan. 23, 1931	10 years.
Do	Sac and Fox, and Iowa		Mar. 27, 1896	Do.
Do	.....do		July 23, 1906	Do.
Do	.....do		Aug. 28, 1906	Do.
Do	.....do	2432	Aug. 1, 1916	Do.
Do	.....do	4435	Apr. 29, 1926	Do.
Do	Tonkawa	2866	May 25, 1918	Do.
Do	Tonkawa (Oakland)	4816	Feb. 25, 1928	Do.
Do	Kaw		Act of March 1923 (42 Stat. 1561).	25 years.
Do	.....do		Act of May 27, 1924 (43 Stat. 176).	20 years.
Do	Otoe and Missouri	4281	Aug. 11, 1925	10 years.
Do	.....do	5728	Sept. 29, 1931	Do.
Do	.....do	5768	Dec. 30, 1931	Do.
Do	Kiowa, Comanche, Apache, and Wichita.	4398	Mar. 18, 1926	Do.
Do	.....do	5953	Nov. 23, 1932	Do.
Do	.....do	5955	Nov. 30, 1932 (Gertrude Lamb).	Do.
Do	Seneca	5306	Mar. 18, 1930	Do.
Do	Quapaw		Act of Mar. 3, 1921 (41 Stat. 1248) as amended Nov. 18, 1921 (42 Stat. 1570).	25 years.
Do	.....do		As supplemented or amended by the act of July 27, 1939 (53 Stat. 1127).	Do.
Oregon	*Grande Ronde	2376	Apr. 29, 1916	10 years.
Do	.....do	4408	Mar. 30, 1926	Do.
Do	Siletz	3110	July 10, 1919	Do.
Do	Siletz (cont.)	5087	Apr. 1, 1929	Do.
Do	*Warm Springs	3586	Dec. 7, 1921	Do.
Do	.....do	5734	Oct. 17, 1931	Do.
Do	Umatilla	4024	June 10, 1924	Do.
Do	.....do	5516	Dec. 17, 1930	Do.
Do	Klamath	6961	Feb. 4, 1935	Do.
Do	.....do		Act of Dec. 24, 1942 (56 Stat. 1081).	25 years.
South Dakota	Crow Creek	3362	Nov. 30, 1920	Do.
Do	.....do	5768	Dec. 30, 1931	10 years.
Do	.....do	6968	Feb. 9, 1935	Do.
Do	*Rosebud	4417	Apr. 14, 1926	Do.
Do	.....do	5028	Jan. 16, 1929	Do.
Do	.....do	5302	Mar. 12, 1930	Do.
Do	.....do	5768	Dec. 30, 1931	Do.
Do	Sisseton and Wahpeton	1916	Apr. 16, 1914	Do.
Do	.....do	3994	Apr. 19, 1924	15 years.
Do	*Yankton Sioux	2363	Apr. 20, 1916	10 years.
Do	.....do	4406	Mar. 30, 1926	Do.
South Dakota	Crow Creek	5173	Aug. 9, 1929	10 years.
Do	*Lower Brule	4981	Oct. 20, 1923	Do.
Do	*Pine Ridge	5557	Feb. 13, 1931	Do.
Do	.....do	5768	Dec. 30, 1931	Do.
Do	.....do	5953	Nov. 23, 1932	Do.
Do	*Cheyenne River	5546	Jan. 31, 1931	Do.

State	Reservation	E. O. No.	Date	Period of extension
Do	.....do	5768	Dec. 30, 1931	Do.
Utah	*Uncompahgre, Uintah and White River Bands of Utes.	5357	May 29, 1930	Do.
Washington	Chief Moses Band	2109	Dec. 23, 1914	Do.
Do	.....do	4382	Feb. 10, 1926	10 years from Mar. 8, 1926.
Do	Colville	4157	Feb. 17, 1925	10 years.
Do	.....do	6962	Feb. 4, 1935	Do.
Do	*Quinaielt	5768	Dec. 30, 1931	Do.
Do	Spokane	6939	Jan. 7, 1935	10 years.
Do	Yakima	3630	Feb. 3, 1922	Do.
Do	.....do	4168	Mar. 11, 1925	Do.
Do	.....do	5746	Nov. 10, 1931	Do.
Do	.....do	7036	May 8, 1935	Do.
Do	.....do		Act of May 27, 1937 (50 Stat. 210).	To July 9, 1942.
Wisconsin	*Oneida	2623	May 19, 1917	1 year.
Do	.....do	2856	May 4, 1918	9 years.
Do	.....do	4600	Mar. 1, 1927	10 years.
Wyoming	Wind River	5768	Dec. 30, 1931	Do.
Do	.....do	5953	Nov. 23, 1932	Do.

Pursuant to act of June 21, 1906 (34 Stat. 325) extending trust or other period of restriction contained in patents issued to Indians for land on the public domain, the following orders have been promulgated:

E. O. No.	Date	Period of extension
2133	Feb. 3, 1915	1 year.
2326	Feb. 23, 1916	Do.
2505	Jan. 3, 1917	Do.
2778	Dec. 31, 1917	Do.
3024	Jan. 11, 1919	Do.
3204	Dec. 23, 1919	Do.
3365	Dec. 7, 1920	25 years.

No further separate orders covering extension of trust periods on public domain allotments were issued subsequent to Executive Order 3365 of December 7, 1920. The trust or other periods of restriction contained in patents issued to Indians for land on the public domain have thereafter been extended by the terms of the general Executive orders.

GENERAL ORDERS

E. O. No.	Date	Period of extension
6498	Dec. 15, 1933	10 years.
6926	Dec. 20, 1934 (Oklahoma only)	Do.
7206	Oct. 14, 1935 (Oklahoma only)	Do.
7464	Sept. 30, 1936	25 years.
7716	Sept. 29, 1937	Do.
7984	Oct. 7, 1938	25 years.
8276	Oct. 28, 1939	Do.
8580	Oct. 29, 1940	Do.
8965	Dec. 10, 1941	Do.
9272	Nov. 17, 1942	Do.
9398	Nov. 25, 1943	Do.
9500	Nov. 14, 1944	Do.
9659	Nov. 21, 1945	Do.
9811	Dec. 17, 1946	Do.
9920	Jan. 8, 1948, effective Jan. 1, 1948	Do.

GENERAL ORDERS—Continued

E. O. No.	Date	Period of extension
10027	Jan. 6, 1949	Do.
10091	Dec. 11, 1949	Do.
10191	Dec. 13, 1950	Do.

Beginning with Executive Order 6498, issued December 15, 1933, regardless of the location of the allotments, all trust or restrictive periods on allotments expiring on a given date have been extended by one general Executive order issued annually.

GENERAL ORDERS

Order	Date	Per. of exten.	FR citation
Sec. Int.	Dec. 29, 1951	1 year	17 FR 799.
Do	Dec. 29, 1952	...do	18 FR 106.
Do	Dec. 28, 1953	...do	18 FR 8897.
Do	Dec. 17, 1954	...do	19 FR 8658.
Do	Nov. 17, 1955	...do	20 FR 8519.
Do	Dec. 6, 1956	...do	21 FR 9644.
Do	Jan. 7, 1958	...do	23 FR 112.
Do	Jan. 7, 1959	5 yrs	24 FR 127.
Do	Dec. 8, 1959	...do	24 FR 9847.
Do	Dec. 24, 1960	...do	25 FR 13688.
Do	Dec. 28, 1961	...do	26 FR 12569.
Sec. Int.	Jan. 4, 1963	...do	28 FR 122.
Do	Oct. 31, 1963	...do	28 FR 11630.
Do	Oct. 9, 1968	...do	33 FR 15067.
Dep. Ass	Dec. 14, 1973	...do	38 FR 33463.
Sec. Int	Dec. 14, 1978	...do	43 FR 58369.
Do	July 27, 1983	...do	48 FR 34026
Sec. Int	Aug. 15, 1988	5 yrs.	53 FR 30674.

NOTE: Executive orders and orders of the Secretary of the Interior (17 FR 799, Jan. 26, 1952; 18 FR 106, Jan. 6, 1953; 18 FR 8897, Dec. 31, 1953; 19 FR 8658, Dec. 17, 1954; 20 FR 8519, Nov. 11, 1955; 21 FR 9644, Dec. 6, 1956; 23 FR 112, Jan. 7, 1958; 24 FR 127, Jan. 7, 1959; 24 FR

9847, Dec. 8, 1959; 25 FR 13688, Dec. 24, 1960; 26 FR 12569, Dec. 28, 1961; 28 FR 122, Jan. 4, 1963; 28 FR 11630, Oct. 31, 1963; 33 FR 15067, Oct. 9, 1968; 38 FR 34463, Dec. 14, 1973; 43 FR 58369, Dec. 14, 1978; 48 FR 34026, July 27, 1983); 53 FR 30674, Aug. 15, 1988, extended the trust periods on Indian lands expiring during the calendar years of 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964–1968, 1969–1973, 1974–1978, 1979–1983, 1984–1988, 1989–1993 respectively.

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301.4 Application of dies.
301.5 Applique elements in design.
301.6 Stone for ornamentation.
301.7 Stonecutting.
301.8 Finish.

AUTHORITY: Sec. 3, 49 Stat. 892; 25 U.S.C. 305b. Interpret or apply sec. 2, 49 Stat. 891, as amended; 25 U.S.C. 305a.

SOURCE: The provisions of this part 301 contained in standards for Navajo, Pueblo, and Hopi silver and turquoise products, Mar. 9, 1937, unless otherwise noted.

§ 301.1 Eligibility for use of Government stamp.

Subect to the detailed requirements that follow, the Government stamp shall be affixed only to work individually produced and to work entirely hand-made. No object produced under conditions resembling a bench work system, and no object in whose manufacture any power-driven machinery has been used, shall be eligible for the use of the Government stamp.

§ 301.2 Specifications of material.

Silver slugs of 1 ounce weight or other silver objects may be used, provided their fineness is at least 900, and provided further that no silver sheet shall be used. Unless cast, the slug or other object is to be hand hammered to thickness and shape desired. The only exceptions here are pins on brooches or similar objects; ear screws for earrings; backs for tie clasps and chains which may be of silver of different fineness and mechanically made.

§ 301.3 Specifications of dies.

Dies used are to be entirely hand-made, with no tools more mechanical than hand tools and vise. Dies shall contain only a single element of the design.

§ 301.4 Application of dies.

Dies are to be applied to the object with the aid of nothing except hand tools.

§ 301.5 Applique elements in design.

All such parts of the ornament are to be hand-made. If wire is used, it is to be hand-made with no tool other than a hand-made draw plate. These requirements apply to the boxes for stone used in the design.

§ 301.6 Stone for ornamentation.

In addition to turquoise, the use of other local stone is permitted. Turquoise, if used, must be genuine stone, uncolored by any artificial means.

§ 301.7 Stonecutting.

All stone used, including turquoise, is to be hand-cut and polished. This permits the use of hand- or foot-driven wheels.

§ 301.8 Finish.

All silver is to be hand polished.

PART 304—NAVAJO, PUEBLO, AND HOPI SILVER, USE OF GOVERNMENT MARK

Sec.
304.1 Penalties for imitation or unauthorized use.
304.2 Marking and ownership of dies.
304.3 Classifying and marking of silver.
304.4 Standards and additional requirements.
304.5 Dies to identify tribe.
304.6 Responsibility of dealer.
304.7 Eligibility of silver meeting standards.
304.8 Use of label by dealer.
304.9 Placards; display of regulations.

AUTHORITY: Sec. 3, 49 Stat. 892; 25 U.S.C. 305b. Interpret or apply sec. 2, 49 Stat. 891, as amended; 25 U.S.C. 305a.

SOURCE: The provisions of this part 304 contained in regulations governing use of Government mark on Navajo, Pueblo, and Hopi silver, April 2, 1937, unless otherwise noted.

§ 304.1 Penalties for imitation or unauthorized use.

The use of Government trade-marks in an unauthorized manner, or the colorable imitation of such marks, is

subject to the criminal penalties imposed by section 5 of the said act (49 Stat. 892; 25 U.S.C. 305d).

§304.2 Marking and ownership of dies.

All dies used to mark silver will be provided by and owned by the Indian Arts and Crafts Board.

§304.3 Classifying and marking of silver.

For the present the Indian Arts and Crafts Board reserves to itself the sole right to judge what silver complying with its standards shall bear the Government mark. All such marking of silver shall, for the present, be done by an agent of the Indian Arts and Crafts Board.

§304.4 Standards and additional requirements.

No piece of silver, though made in compliance with the standards set forth by the Indian Arts and Crafts Board, shall bear the Government mark unless:

(a) Its weight is substantially in accord with Indian usage and custom.

(b) Its design elements are substantially in accord with Indian usage and tradition.

(c) Its workmanship is substantially that expected in good hand craftsmanship.

§304.5 Dies to identify tribe.

Dies are marked with name of tribe. A Navajo stamp will be used where the marker is a Navajo Indian; similarly, for Zuni, Hopi, and Rio Grande Pueblo.

§304.6 Responsibility of dealer.

All dies will be numbered, and each wholesaler or dealer will be held responsible for any violation of standards in silver that bears his mark. Until such time as the Board relinquishes its sole right to mark silver, the responsibility of the dealer for whom silver is marked will be confined to misrepresentations as to quality of silver and of stones used for ornament and to methods of production.

§304.7 Eligibility of silver meeting standards.

In addition to silver currently made in compliance with the standards of the Indian Arts and Crafts Board, other silver products made prior to the promulgation of the regulations in this part may be stamped, provided the maker thereof is known to be an Indian, and the product satisfies the requirements in §304.4.

§304.8 Use of label by dealer.

Any dealer offering for sale silver bearing the Government mark may, if he wishes, attach to silver so marked a label or ticket calling attention to the Government mark.

§304.9 Placards; display of regulations.

Every dealer offering for sale silver bearing the Government mark may display in a prominent place a placard setting forth the standards and the regulations in this part, such placard to be furnished by the Indian Arts and Crafts Board.

[Regs., Apr. 2, 1937, as amended Feb. 21, 1938]

PART 307—NAVAJO ALL-WOOL WOVEN FABRICS; USE OF GOVERNMENT CERTIFICATE OF GENUINENESS

Sec.

307.1 Penalties.
307.2 Certificates of genuineness; by whom affixed.
307.3 Granting of licenses, contract, and bond requirements.
307.4 Standards for fabrics.
307.5 Hand seal press and certificates to be furnished.
307.6 Fees.
307.7 Suspension of license.
307.8 Revocation of license.
307.9 Surrender of license.
307.10 Period of license.
307.11 Certificates fastened to fabrics.
307.12 Certificates, dating, and signing thereof.
307.13 Licensee's responsibility.

AUTHORITY: Sec. 3, 49 Stat. 892 (25 U.S.C. 305b). Interpret or apply sec. 2, 49 Stat. 891, as amended (25 U.S.C. 305a).

SOURCE: The provisions of this part 307 contained in regulations governing the use of Government certificate of genuineness for Navajo all-wool woven fabrics, Oct. 20, 1937, unless otherwise noted.

§ 307.1 Penalties.

The use of Government trade-marks in an unauthorized manner, or the colorable imitation of such marks, is subject to the criminal penalties imposed by section 5 of the said act (49 Stat. 892; 25 U.S.C. 305d), which provides:

> Any person who shall counterfeit or colorably imitate any Government trade-mark used or devised by the Board as provided in section 305a of this chapter, or shall, except as authorized by the Board, affix any such Government trade-mark, or shall knowingly, willfully, and corruptly affix any reproduction, counterfeit, copy, or colorable imitation thereof upon any products, Indian or otherwise, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products, or any person who shall knowingly make any false statement for the purpose of obtaining the use of any such Government trade-mark shall be guilty of a misdemeanor, and upon conviction thereof shall be enjoined from further carrying on the act or acts complained of and shall be subject to a fine not exceeding $20,000, or imprisonment not exceeding six months, or both such fine and imprisonment.

§ 307.2 Certificates of genuineness; by whom affixed.

Government certificates of genuineness for Navajo all-wool woven fabrics may be affixed to fabrics meeting the conditions specified in § 307.4 by persons duly authorized to affix such certificates, under license issued by the Indian Arts and Crafts Board.

§ 307.3 Granting of licenses, contract, and bond requirements.

A license may be granted to any person desiring to use the Government certificate of genuineness for Navajo all-wool woven fabrics who shall make application therefor and shall execute a contract acceptable to the Indian Arts and Crafts Board providing for the use of such certificates in conformity with the regulations in this part, which contract shall be accompanied by an indemnity bond acceptable to the Indian Arts and Crafts Board, in the amount of $500, conditioned upon faithful performance of such contract.

§ 307.4 Standards for fabrics.

No fabric may carry the Government certificate of genuineness for Navajo all-wool woven fabric unless all of the following conditions are met:

(a) The fabric is made entirely of local wool that is locally hand-spun and is entirely woven on a native Navajo loom;

(b) The fabric is made by a member of the Navajo Tribe working under conditions not resembling a workshop or factory system;

(c) The size of the fabric is indicated in the certificate;

(d) The licensee signs the certificate.

[Regs., Oct. 20, 1937, as amended at 4 FR 2436, June 17, 1939]

§ 307.5 Hand seal press and certificates to be furnished.

Each licensee will be furnished, upon payment of the registration and license fees specified in § 307.6 one hand seal press and a supply of blank Government certificates, which shall be used only in accordance with this license, and shall remain at all times the property of the Board.

§ 307.6 Fees.

Each licensee shall pay a registration fee of $2, together with a license fee which shall be determined on the basis of $1 for each 40 Government certificates ordered by the licensee from the Board.

§ 307.7 Suspension of license.

In the event that complaint is made to the Board that any provision of any license or of the regulations in this part has been violated by any licensee, the Board may suspend the license and all authority conferred thereby, in its discretion, for a period of 30 days, by notifying the licensee of such suspension, by mail, by telegraph, or in any other manner.

§ 307.8 Revocation of license.

In the event that the Board, after giving a licensee written notice of charges and affording an opportunity to reply to such charges, orally or in writing, is satisfied that any provision of any license or of the regulations in this part has been violated by any licensee, the Board may revoke the license by notifying the licensee of such revocation, by mail, by telegraph, or in any other manner. Upon notice of such

revocation all authority conferred by the license so revoked shall forthwith terminate, but the validity of actions taken while the license was in force shall not be affected.

§307.9 Surrender of license.

Any license may be surrendered by the licensee at any time by surrendering to the Board the Government hand seal press and unused certificates of genuineness entrusted to the licensee, accompanied by a copy of the license marked ''surrendered'' and signed by the licensee. Such surrender shall take effect as of the time that such property and document have been received by the Board.

§307.10 Period of license.

Each license shall be in effect from the date of execution thereof and until 1 year thereafter, unless sooner surrendered or canceled in accordance with the foregoing provisions.

§307.11 Certificates fastened to fabrics.

Certificates shall be fastened to the woven fabric by wire caught in a lead seal disc that shall be impressed and made fast with the hand seal press furnished by the Indian Arts and Crafts Board.

§307.12 Certificates, dating, and signing thereof.

When the certificate is first affixed the lower of the two spaces provided for the purpose shall be signed by the licensee. In the event the ultimate retailer of any fabric so marked is not the person who originally attached the certificate, that ultimate retailer may sign the upper of the two spaces provided for the purpose and detach the original signature.

[4 FR 2436, June 17, 1939]

§307.13 Licensee's responsibility.

Certificates may be attached only to products which are in the ownership or possession of the licensee. Certificates will be consecutively numbered and records of the allocation of such certificates will be maintained by the Indian Arts and Crafts Board. Each licensee will be held responsible for the proper use of such certificates and of the Government hand seal press furnished to such licensee.

PART 308—REGULATIONS FOR USE OF CERTIFICATES OF THE INDIAN ARTS AND CRAFTS BOARD TO BE ATTACHED TO THEIR TRADE-MARKS BY INDIAN ENTERPRISES CONCERNED WITH THE PRODUCTION AND SALE OF GENUINE HANDICRAFTS

Sec.
308.1 Penalties.
308.2 Certificates of genuineness to be attached to trade-marks.
308.3 Conditions of eligibility to attach certificates.
308.4 Revocation of privilege of attaching certificates.

AUTHORITY: Sec. 3, 49 Stat. 892 (25 U.S.C. 305b). Interpret or apply sec. 2, 49 Stat. 891, as amended (25 U.S.C. 305a).

SOURCE: 8 FR 8736, June 26, 1943, unless otherwise noted.

§308.1 Penalties.

The use of Government trade-marks in an unauthorized manner, or the colorable imitation of such marks, is subject to the criminal penalties imposed by section 5 of the said act (49 Stat. 892; 25 U.S.C. 305d), which provides:

> Any person who shall counterfeit or colorably imitate any Government trade-mark used or devised by the Board as provided in section 305a of this chapter, or shall, except as authorized by the Board, affix any such Government trade-mark, or shall knowingly, willfully, and corruptly affix any reproduction, counterfeit, copy, or colorable imitation thereof upon any products Indian or otherwise, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products, or any person who shall knowingly make any false statement for the purpose of obtaining the use of any such Government trade-mark, shall be guilty of a misdemeanor, and upon conviction thereof shall be enjoined from further carrying on the act or acts complained of and shall be subject to a fine not exceeding $2,000, or imprisonment not exceeding six months, or both such fine and imprisonment.

§ 308.2 Certificates of genuineness to be attached to trade-marks.

(a) To insure the widest distribution of genuine Indian handicraft products, and to protect the various enterprises organized by individual Indian craftsmen, or by groups of Indian craftsmen, for the purpose of the production and sale of such handicraft products, the Indian Arts and Crafts Board offers each such enterprise the privilege of attaching to its trademark a certificate declaring that it is recognized by the Indian Arts and Crafts Board as an Indian enterprise dealing in genuine Indian-made handicraft products, and that its trade-mark has the approval of the Board.

(b) The certificate shall consist of a border around the trade-mark bearing the words ''Certified Indian Enterprise Genuine Handicrafts, U.S. Indian Arts and Crafts Board, Department of the Interior,'' and these words may be used wherever the trade-mark appears.

§ 308.3 Conditions of eligibility to attach certificates.

To be eligible to attach the certificate, an enterprise must meet the following conditions:

(a) It must offer for sale only Indian-made genuine handicraft products, i.e., objects produced by Indian craftsmen with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product.

(b) It must be entirely Indian owned and organized either by individual Indians or by groups of Indians.

(c) It must agree to apply certificates of genuineness only to such products as meet the standards of quality prescribed by the Indian Arts and Crafts Board at the time of the application of the enterprise for the privilege of attaching the certificate.

(d) It must agree to obtain the approval of the Indian Arts and Crafts Board as to the manner of production of the certificates.

§ 308.4 Revocation of privilege of attaching certificates.

If an enterprise, after securing the privilege of attaching the certificates, should fail to meet the above-named conditions, the Board reserves the right to revoke the privilege.

PART 309—PROTECTION OF INDIAN ARTS AND CRAFTS PRODUCTS

Sec.

309.1 How do the regulations in this part carry out the Indian Arts and Crafts Act of 1990?
309.2 What are the key definitions for purposes of the Act?
309.3 How will statements about Indian origin of art or craft products be interpreted?
309.4 How can an individual be certified as an Indian artisan?
309.5 What penalties apply?
309.6 How are complaints filed?

AUTHORITY: 18 U.S.C. 1159, 25 U.S.C. 305 *et seq.*

SOURCE: 61 FR 54555, Oct. 21, 1996, unless otherwise noted.

§ 309.1 How do the regulations in this part carry out the Indian Arts and Crafts Act of 1990?

These regulations define the nature and Indian origin of products protected by the Indian Arts and Crafts Act of 1990 (18 U.S.C. 1159, 25 U.S.C. 305 et seq.) from false representations, and specify how the Indian Arts and Crafts Board will interpret certain conduct for enforcement purposes. The Act makes it unlawful to offer or display for sale or sell any good in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian, or Indian tribe, or Indian arts and crafts organization resident within the United States.

§ 309.2 What are the key definitions for purposes of the Act?

(a) *Indian* as applied to an individual means a person who is a member of an Indian tribe or for purposes of this part is certified by an Indian tribe as a non-member Indian artisan (in accordance with the provisions of § 309.4).

(b) *Indian artisan* means an individual who is certified by an Indian tribe as a non-member Indian artisan.

(c) *Indian arts and crafts organization* means any legally established arts and crafts marketing organization composed of members of Indian tribes.

(d) *Indian product*—(1) *In general.* Indian product means any art or craft product made by an Indian.

(2) *Illustrations.* The term ''Indian product'' includes, but is not limited to:

(i) Art works that are in a traditional or non-traditional Indian style or medium;

(ii) Crafts that are in a traditional or non-traditional Indian style or medium;

(iii) Handcrafts, i.e. objects created with the help of only such devices as allow the manual skill of the maker to condition the shape and design of each individual product.

(3) *Exclusion for products made before 1935.* The provisions of this part shall not apply to any art or craft products made before 1935.

(e) *Indian tribe* means—

(1) Any Indian tribe, band, nation, Alaska Native village, or any organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(2) Any Indian group that has been formally recognized as an Indian tribe by a State legislature or by a State commission or similar organization legislatively vested with State tribal recognition authority.

(f) *Product of a particular Indian tribe or Indian arts and crafts organization* means that the origin of a product is identified as a named Indian tribe or named Indian arts and crafts organization.

[61 FR 54555, Oct. 21, 1996; 61 FR 57002, Nov. 5, 1996]

§309.3 How will statements about Indian origin of art or craft products be interpreted?

(a) *In general.* The unqualified use of the term ''Indian'' or of the term ''Native American'' or the unqualified use of the name of an Indian tribe, in connection with an art or craft product, is interpreted to mean for purposes of this part that—

(1) The maker is a member of an Indian tribe, is certified by an Indian tribe as a non-member Indian artisan, or is a member of the particular Indian tribe named; and

(2) The art or craft product is an Indian product.

(b) *Products of Indians of foreign tribes*—(1) *In general.* The unqualified use of the term ''Indian'' or of the term ''Native American'' or the unqualified use of the name of a foreign tribe, in connection with an art or craft product, regardless of where it is produced and regardless of any country-of-origin marking on the product, is interpreted to mean for purposes of this part that—

(i) The maker is a member of an Indian tribe, is certified by an Indian tribe as a non-member Indian artisan, or is a member of the particular Indian tribe named;

(ii) The tribe is resident in the United States; and

(iii) The art or craft product is an Indian product.

(2) *Exception where country of origin is disclosed.* Paragraph (b) of this section does not apply to any art or craft for which the name of the foreign country of tribal ancestry is clearly disclosed in conjunction with marketing of the product.

(c) *Example.* X is a lineal descendant of a member of Indian Tribe A. However, X is not a member of Indian Tribe A, nor is X certified by Indian Tribe A as a non-member Indian artisan. X may not be described in connection with the marketing of an art or craft product made by X as an Indian, a Native American, a member of an Indian tribe, a member of Tribe A, or as a non-member Indian artisan of an Indian tribe. However, the true statement may be used that X is of Indian descent, Native American descent, or Tribe A descent.

[61 FR 54555, Oct. 21, 1996; 61 FR 57002, Nov. 5, 1996]

§309.4 How can an individual be certified as an Indian artisan?

(a) In order for an individual to be certified by an Indian tribe as a non-member Indian artisan for purposes of this part—

(1) The individual must be of Indian lineage of one or more members of such Indian tribe; and

(2) The certification must be documented in writing by the governing body of an Indian tribe or by a certifying body delegated this function by the governing body of the Indian tribe.

(b) As provided in section 107 of the Indian Arts and Crafts Act of 1990, Public Law 101–644, a tribe may not impose a fee for certifying an Indian artisan.

§ 309.5 What penalties apply?

A person who offers or displays for sale or sells a good, with or without a Government trademark, in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization, resident within the United States:

(a) Is subject to the criminal penalties specified in section 1159, title 18, United States Code; and

(b) Is subject to the civil penalties specified in section 305e, title 25, United States Code.

§ 309.6 How are complaints filed?

Complaints about protected products alleged to be offered or displayed for sale or sold in a manner that falsely suggests they are Indian products should be made in writing and addressed to the Director, Indian Arts and Crafts Board, Room 4004–MIB, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240.

PART 310—USE OF GOVERNMENT MARKS OF GENUINENESS FOR ALASKAN INDIAN AND ALASKAN ESKIMO HAND-MADE PRODUCTS

Sec.
310.1 Penalties.

ALASKAN INDIAN

310.2 Certificates of genuineness, authority to affix.
310.3 Conditions.
310.4 Application of mark.

ALASKAN ESKIMO

310.5 Certificates of genuineness, authority to affix.
310.6 Conditions.
310.7 Application of mark.

AUTHORITY: Sec. 3, 49 Stat. 892; 25 U.S.C. 305b. Interpret or apply sec. 2, 49 Stat. 891, as amended; 25 U.S.C. 305a.

SOURCE: 4 FR 515, Feb. 4, 1939, unless otherwise noted.

§ 310.1 Penalties.

The use of Government trade-marks in an unauthorized manner, or the colorable imitation of such marks, is subject to the criminal penalties imposed by section 5 of the said act (49 Stat. 892; 25 U.S.C., 305d), which provides:

> Any person who shall counterfeit or colorably imitate any Government trade-mark used or devised by the Board as provided in section 305a of this chapter, or shall, except as authorized by the Board, affix any such Government trade-mark, or shall knowingly, willfully, and corruptly affix any reproduction, counterfeit, copy, or colorable imitation thereof upon any products, Indian or otherwise, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products, or any person who shall knowingly make any false statement for the purpose of obtaining the use of any such Government trade-mark, shall be guilty of a misdeameanor, and upon conviction thereof shall be enjoined from further carrying on the act or acts complained of and shall be subject to a fine not exceeding $2,000 or imprisonment not exceeding six months or both such fine and imprisonment.

ALASKAN INDIAN

§ 310.2 Certificates of genuineness, authority to affix.

Government marks of genuineness for Alaskan Indian hand-made products may be affixed to articles meeting the conditions specified in § 310.3 by persons duly authorized by the Indian Arts and Crafts Board to affix such marks.

§ 310.3 Conditions.

No article may carry the Government mark of genuineness for Alaskan Indian hand-made products unless all of the following conditions are met:

(a) The article is hand-made by an Alaskan Indian.

(b) The article is hand-made under conditions not resembling a workshop or factory system.

(c) All raw materials used in carving, basketry and mat making, and all furs and hides used in the manufacture of hand-made artifacts, must be of native origin.

§310.4 Application of mark.

All marks shall be applied to the article with a rubber stamp to be furnished by the Indian Arts and Crafts Board. Each stamp shall bear a distinctive letter and may be used only by the person to whom it has been issued. With the addition of the distinctive letter, each stamp shall read:

( )

HAND-MADE

ALASKAN INDIAN

U S

INDIAN ARTS & CRAFTS BOARD

I D

or, in the case of articles too small to carry this stamp:

( )

U S I D

ALASKAN INDIAN

On baskets and fabrics which offer no surface for the application of such a rubber stamp, the stamp shall be placed on a paper tag attached to the article by a wire caught in a lead seal disc that shall be impressed and made fast with a hand seal press furnished by the Indian Arts and Crafts Board.

ALASKAN ESKIMO

§310.5 Certificates of genuineness, authority to affix.

Government marks of genuineness for Alaskan Eskimo hand-made products may be affixed to articles meeting the conditions specified in §310.6 by persons duly authorized by the Indian Arts and Crafts Board to affix such marks.

§310.6 Conditions.

No article may carry the Government mark of genuineness for Alaskan Eskimo hand-made products unless all of the following conditions are met:

(a) The article is hand-made by an Alaskan Eskimo.

(b) The article is hand-made under conditions not resembling a workshop or factory system.

(c) All raw materials used in the making of the articles are of native origin except:

(1) Commercial fasteners.

(2) Calfskin trimmings for decorative borders on parkas and mukluks.

(3) Tops for mukluks made of commercial fabric.

(4) Commercially made draw-cords for mukluks.

(5) Commercial fabrics for parka linings.

(6) Sewing thread and glass beads.

§310.7 Application of mark.

All marks shall be applied to the article with a rubber stamp to be furnished by the Indian Arts and Crafts Board. Each stamp shall bear a distinctive letter and may be used only by the person to whom it has been issued. With the addition of the distinctive letter, each stamp shall read:

( )

HAND-MADE

ALASKAN ESKIMO

U S

INDIAN ARTS & CRAFTS BOARD

I D

or, in the case of articles too small to carry this stamp:

( )

U S I D

ALASKAN ESKIMO

On baskets and fabrics which offer no surface for the application of such a rubber stamp, the stamp shall be placed on a paper tag attached to the article by a wire caught in a lead seal disc that shall be impressed and made fast with a hand seal press furnished by the Indian Arts and Crafts Board.

CHAPTER III—NATIONAL INDIAN GAMING COMMISSION, DEPARTMENT OF THE INTERIOR

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SUBCHAPTER A—GENERAL PROVISIONS

PART 501—PURPOSE AND SCOPE OF THIS CHAPTER

Sec.
501.1 Purpose.
501.2 Scope.

AUTHORITY: 25 U.S.C. 2706, 2710.

SOURCE: 58 FR 5810, Jan. 22, 1993, unless otherwise noted.

§ 501.1 Purpose.

This chapter implements the Indian Gaming Regulatory Act (Pub. L. 100–497, 102 Stat. 2467).

§ 501.2 Scope.

(a) Tribes and other operators of class II and class III gaming operations on Indian lands shall conduct gaming operations according to the requirements of the Indian Gaming Regulatory Act, the regulations of this chapter, tribal law and, where applicable, the requirements of a compact or procedures prescribed by the Secretary under 25 U.S.C. 2710(d).

(b) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of the Indian Gaming Regulatory Act or this chapter.

(c) Class II gaming on Indian lands shall continue to be within the jurisdiction of an Indian tribe, but shall be subject to the provisions of the Indian Gaming Regulatory Act and this Chapter.

(d) Nothing in the Indian Gaming Regulatory Act or this Chapter shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with a State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by a Tribal-State compact that is entered into by an Indian tribe under the Indian Gaming Regulatory Act and that is in effect.

PART 502—DEFINITIONS OF THIS CHAPTER

Sec.
502.1 Chairman.
502.2 Class I gaming.
502.3 Class II gaming.
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502.5 Collateral agreement.
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502.20 Secretary.
502.21 Tribal-state compact.

AUTHORITY: 25 U.S.C. 2701 *et seq.*

SOURCE: 57 FR 12392, Apr. 9, 1992, unless otherwise noted.

§ 502.1 Chairman.

Chairman means the Chairman of the National Indian Gaming Commission or his or her designee.

§ 502.2 Class I gaming.

Class I gaming means:

(a) Social games played solely for prizes of minimal value; or

(b) Traditional forms of Indian gaming when played by individuals in connection with tribal ceremonies or celebrations.

§ 502.3 Class II gaming.

Class II gaming means:

(a) Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:

(1) Play for prizes with cards bearing numbers or other designations;

(2) Cover numbers or designations when object, similarly numbered or designated, are drawn or electronically determined; and

(3) Win the game by being the first person to cover a designated pattern on such cards;

(b) If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo;

(c) Nonbanking card games that:

(1) State law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the state; and

(2) Players play in conformity with state laws and regulations concerning hours, periods of operation, and limitations on wagers and pot sizes;

(d) Card games played in the states of Michigan, North Dakota, South Dakota, or Washington if:

(1) An Indian tribe actually operates the same card games as played on or before May 1, 1988, as determined by the Chairman; and

(2) The pot and wager limits remain the same as on or before May 1, 1988, as determined by the Chariman;

(e) Individually owned class II gaming operations—

(1) That were operating on September 1, 1986;

(2) That meet the requirements of 25 U.S.C. 2710(b)(4)(B);

(3) Where the nature and scope of the game remains as it was on October 17, 1988; and

(4) Where the ownership interest or interests are the same as on October 17, 1988.

§ 502.4 Class III gaming.

Class III gaming means all forms of gaming that are not class I gaming or class II gaming, including but not limited to:

(a) Any house banking game, including but not limited to—

(1) Card games such as baccarat, chemin de fer, blackjack (21), and pai gow (if played as house banking games);

(2) Casino games such as roulette, craps, and keno;

(b) Any slot machines as defined in 15 U.S.C. 1171(a)(1) and electronic or electromechanical facsimiles of any game of chance;

(c) Any sports betting and pari-mutuel wagering including but not limited to wagering on horse racing, dog racing or jai alai; or

(d) Lotteries.

§ 502.5 Collateral agreement.

Collateral agreement means any contract, whether or not in writing, that is related, either directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe (or any of its members, entities, or organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor).

§ 502.6 Commission.

Commission means the National Indian Gaming Commission.

§ 502.7 Electronic, computer or other technologic aid.

Electronic, computer or other technologic aid means a device such as a computer, telephone, cable, television, satellite or bingo blower and that when used—

(a) Is not a game of chance but merely assists a player or the playing of a game;

(b) Is readily distinguishable from the playing of a game of chance on an electronic or electromechanical facsimile; and

(c) Is operated according to applicable Federal communications law.

§ 502.8 Electronic or electromechanical facsimile.

Electronic or electromechanical facsimile means any gambling device as defined in 15 U.S.C. 1171(a) (2) or (3).

§ 502.9 Game similar to bingo.

Game similar to bingo means any game that meets the requirements for bingo under § 502.3(a) of this part and that is not a house banking game under § 502.11 of this part.

§ 502.10 Gaming operation.

Gaming operation means each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. A gaming operation may be operated by a tribe directly; by a management contractor; or, under certain conditions, by another person or other entity.

§502.11 House banking game.

House banking game means any game of chance that is played with the house as a participant in the game, where the house takes on all players, collects from all losers, and pays all winners, and the house can win.

§502.12 Indian lands.

Indian lands means:

(a) Land within the limits of an Indian reservation; or

(b) Land over which an Indian tribe exercises governmental power and that is either—

(1) Held in trust by the United States for the benefit of any Indian tribe or individual; or

(2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

§502.13 Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians that the Secretary recognizes as—

(a) Eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(b) Having powers of self-government.

§502.14 Key employee.

Key employee means:

(a) A person who performs one or more of the following functions:

(1) Bingo caller;

(2) Counting room supervisor;

(3) Chief of security;

(4) Custodian of gaming supplies or cash;

(5) Floor manager;

(6) Pit boss;

(7) Dealer;

(8) Croupier;

(9) Approver of credit; or

(10) Custodian of gambling devices including persons with access to cash and accounting records within such devices;

(b) If not otherwise included, any other person whose total cash compensation is in excess of $50,000 per year; or,

(c) If not otherwise included, the four most highly compensated persons in the gaming operation.

§502.15 Management contract.

Management contract means any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.

§502.16 Net revenues.

Net revenues means gross gaming revenues of an Indian gaming operation less—

(a) Amounts paid out as, or paid for, prizes; and

(b) Total gaming-related operating expenses, excluding management fees.

§502.17 Person having a direct or indirect financial interest in a management contract.

Person having a direct or indirect financial interest in a management contract means:

(a) When a person is a party to a management contract, any person having a direct financial interest in such management contract;

(b) When a trust is a party to a management contract, any beneficiary or trustee;

(c) When a partnership is a party to a management contract, any partner;

(d) When a corporation is a party to a management contract, any person who is a director or who holds at least 10% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling; or

(e) When an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management contract, all parties of that entity are deemed to be persons having a direct financial interest in a management contract.

§502.18 Person having management responsibility for a management contract.

Person having management responsibility for a management contract means the person designated by the management contract as having management responsibility for the gaming operation, or a portion thereof.

§ 502.19 Primary management official.

Primary management official means:

(a) The person having management responsibility for a management contract;

(b) Any person who has authority:

(1) To hire and fire employees; or

(2) To set up working policy for the gaming operation; or

(c) The chief financial officer or other person who has financial management responsibility.

§ 502.20 Secretary.

Secretary means the Secretary of the Interior.

§ 502.21 Tribal-State compact.

Tribal-State compact means an agreement between a tribe and a state about class III gaming under 25 U.S.C. 2710(d).

PART 503—COMMISSION INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS AND EXPIRATION DATES

Sec.
503.1 Purpose of this part.
503.2 Display of control numbers and expiration dates.

AUTHORITY: 44 U.S.C. 3501 *et seq.*

SOURCE: 58 FR 16495, Mar. 29, 1993, unless otherwise noted.

§ 503.1 Purpose of this part.

This part displays the control numbers and expiration dates assigned to information collection requirements of the National Indian Gaming Commission (NIGC, or the Commission) assigned by the Director of the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

§ 503.2 Display of control numbers and expiration dates.

Part or section number of title 25 CFR	Currently assigned OMB control numbers	Expiration date
§ 514.1 (submission of fee reports)	3141–0007	6/30/94
§ 515.3 (request for access to records)	3141–0002	10/31/95
§ 515.5 (request for amendment to records)	3141–0002	10/31/95
§ 515.7 (appeals)	3141–0002	10/31/95
Part 519 (designation of agent for service)	3141–0003	10/31/95
§ 522.2 (submission and approval of new ordinances)	3141–0003	10/31/95
§ 522.3 (amendment)	3141–0003	10/31/95
§ 522.12 (revocation of class III gaming)	3141–0003	10/31/95
§ 523.2 (submission and approval of existing ordinances)	3141–0003	10/31/95
§ 523.4 (amendment)	3141–0003	10/31/95
Part 524 (appeals)	3141–0003	10/31/95
§ 533.3 (approval of management contracts)	3141–0004	10/31/95
§ 533.5 (modifications)	3141–0004	10/31/95
§ 535.1 (post-approval procedures)	3141–0004	10/31/95
Part 537 (background investigations)	3141–0004	10/31/95
Part 539 (appeals)	3141–0004	10/31/95
§ 556.4 (background investigations for class II gaming)	3141–0003	10/31/95
§ 556.5 (background investigations)	3141–0003	10/31/95
Part 558 (gaming licenses)	3141–0003	10/31/95
§ 571.7 (maintenance of records)	3141–0001	7/31/95
§ 571.12 (audits)	3141–0001	7/31/95
§ 571.13 (audits)	3141–0001	7/31/95
§ 571.14 (audit reconciliation)	3141–0001	7/31/95
§ 575.5 (information to Chairman)	3141–0001	7/31/95
§ 575.6 (penalty reduction)	3141–0001	7/31/95
§ 577.3 (notice of appeal)	3141–0001	7/31/95
§ 577.8 (confidentiality)	3141–0001	7/31/95
§ 577.12 (intervention)	3141–0001	7/31/95

Part or section number of title 25 CFR	Currently assigned OMB control numbers	Expiration date
§577.14 (objections)	3141–0001	7/31/95

PARTS 504—513—[RESERVED]

PART 514—FEES

AUTHORITY: 25 U.S.C. 2706, 2708, 2710, 2717, 2717a.

§514.1 Annual fees.

(a) Each class II gaming operation under the jurisdiction of the Commission shall pay to the Commission annual fees as established by the Commission. The Commission, by a vote of not less than two of its members, shall adopt the rates of fees to be paid.

(1) The Commission shall adopt preliminary rates for each calendar year during the first quarter of that year (or as soon thereafter as possible), and, if considered necessary, shall modify those rates during the second and third quarters of the calendar year.

(2) The Commission shall adopt final rates of fees for each calendar year during the fourth quarter of that year.

(3) The Commission shall publish the rates of fees in a notice in the FEDERAL REGISTER.

(4) The rates of fees imposed shall be—

(i) No less than 0.5 percent nor more than 2.5 percent of the first $1,500,000 (1st tier), and

(ii) No more than 5 percent of amounts in excess of the first $1,500,000 (2nd tier) of the assessable gross revenues from each class II gaming operation regulated by the Commission.

(5) If a tribe has a certificate of self-regulation, the rate of fees imposed shall be no more than .25 percent of assessable gross revenues from self-regulated class II gaming operations.

(b) For purposes of computing fees, assessable gross revenues for each gaming operation are the annual total amount of money wagered in class II gaming, admission fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded, and less an allowance for amortization of capital expenditures for structures.

(1) Unless otherwise provided by the regulations, generally accepted accounting principles shall be used.

(2) The allowance for amortization of capital expenditures for structures shall not exceed 5% of the cost of structures in use throughout the year and 2½% of the cost of structures in use during only a part of the year.

(3) *Example:*

Gross gaming revenues:		
Money wagered	.....	$1,000,000
Admission fees	5,000	
		1,005,000
Less:		
Prizes paid in cash	$500,000	
Cost of other prizes awarded	10,000	510,000
Gross gaming profit	.....	495,000
Less allowance for amortization of. capital expenditures for structures:.		
Capital expenditures for structures made in—		
Prior years	750,000	
Current year	50,000	
	800,000	
Maximum allowance:		
$750,000×.05 =	37,500	
50,000×.025 =	1,250	38,750
Assessable gross revenues	.....	$456,250

(4) All revenues from gaming operations determined by the licensing tribe to be class II are to be included.

(c) Each Class II gaming operation regulated by the Commission shall file with the Commission quarterly a statement showing its assessable gross revenues for the previous calendar year.

(1) These quarterly statements shall show the amounts derived from each class II type of game, the amounts deducted for prizes, and the amounts deducted for the amortization of structures;

(2) These quarterly statements shall be filed no later than—March 31, June 30, September 30, and December 31, of each calendar year the Class II gaming operation is subject to the jurisdiction of the Commission, beginning in September 1991. Any changes or adjustments to the previous year's assessable gross revenue amounts from one quarter to the next shall be explained.

(3) The quarterly statements shall identify an individual or individuals to be contacted should the Commission need to communicate further with the gaming operation. The telephone numbers of the individual(s) shall be included.

(4) The quarterly statements shall be transmitted to the Commission to arrive no later than the due date.

(5) Each Class II gaming operation shall determine the amount of fees to be paid and remit them with the statement required in paragraph (c) of this section. The fees payable shall be computed using—

(i) The most recent rates of fees adopted by the Commission pursuant to paragraph (a)(1) or (a)(2) of this section,

(ii) The assessable gross revenues for the previous calendar year as reported pursuant to this paragraph, and

(iii) The amounts paid and credits received during previous quarters.

(6) Each quarterly statement shall include the computation of the fees payable, showing all amounts used in the calculations. The required calculations are as follows:

(i) Multiply the previous calendar year's 1st tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(ii) Multiply the previous calendar year's 2nd tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(iii) Add (total) the results (products) obtained in paragraphs (c)(6) (i) and (ii) of this section.

(iv) Multiply the total obtained in paragraph (c)(6)(iii) of this section by the fraction representing the quarter for which the computation is being made: 1st quarter—¼; 2nd quarter—½ (2/4); 3rd quarter—¾; and 4th quarter—1 (4/4). For the purpose of making these computations in 1991 only, the third calendar quarter is the first quarter and the fourth calendar quarter is the second quarter. There will be no third or fourth quarter in 1991.

(v) Subtract the amounts already remitted by the operation for the current year and credits, if any, which are due for any previous year's overpayment from the amount determined in paragraph (c)(6)(iv) of this section.

(vi) The amount computed in paragraph (c)(6)(v) of this section is the amount to be remitted.

(7) Examples of fee computations follow:

(i) Example 1: Where a filing is made for the first quarter of the calendar year, the previous year's assessable gross revenues are $2,000,000, the fee rates adopted by the Commission are 2% on the first $1,500,000 and 4% on the remainder, and a credit of $2,000 is due from the previous year, the amounts to be used and the computations to be made are as follows:

1st tier revenues—$1,500,000×2%=	$30,000
2nd tier revenues— 500,000×4%=	20,000
Annual fees	50,000
Multiply for fraction of year—¼ or	.25
Fees for first quarter	12,500
Deduct credit due	2,000
Amount to be remitted	$10,500

(ii) Example 2: Where a filing is being made for the third quarter, the previous year's assessable gross revenues are $5,000,000, the fee rates adopted by the Commission are 1% on the first $1,500,000 and 1.5% on the remainder, and $35,000 has already been remitted, the amounts to be used and the computations to be made are as follows:

1st tier revenues—$1,500,000×1%=	$15,000
2nd tier revenues—3,500,000×1.5%= ...	52,500
Annual fees	67,500
Multiply for fraction of year—¾ or	.75
Fees for first three quarters	50,625
Deduct amounts already remitted ...	[1] 35.000

Amount to be remitted	$15,625

[1] This amount may be other than $33,750 ($67,500×.50) because the assessable gross revenues may have been adjusted, the fee rate may have changed, a credit for the previous year's overpayment may have been received, or a clerical error may have been discovered.

(iii) Example 3: Where a filing is being made for the *third quarter of 1991,* the previous year's assessable gross revenues are $5,000,000, the fee rates adopted by the Commission are 1% on the first $1,500,000 and 1% on the remainder, and nothing has already been remitted, the amounts to be used and the computations to be made are as follows:

1st tier revenues—$1,500,000 x 1%= ...	$15,000
2nd tier revenues—3,500,000 x 1%=	35,000
Annual fees	50,000
Multiply for fraction of year—1/4 or	.25
Fees for first quarter	12,500
Deduct amounts already remitted ...	-0-
Amount to be remitted	$12,500

(8) Quarterly statements, remittances and communications about fees shall be transmitted to the Commission at the following address: Office of Finance, National Indian Gaming Commission, 1850 M Street, NW., suite 250, Washington, DC 20036–5803. Checks should be made payable to the National Indian Gaming Commission (do not remit cash).

(9) The Commission may assess a penalty for failure to file timely a quarterly statement.

(10) Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amounts remaining unpaid after their due date (31 U.S.C. 3717).

(d) The total amount of all fees imposed during any fiscal year shall not exceed $1,500,000. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due at the end of the quarter following the quarter during which the Commission makes such determination.

(1) The Commission will notify each gaming operation as to the amount of overpayment, if any, and therefore the amount of credit to be taken against the next quarterly payment otherwise due.

(2) The notification required in paragraph (d)(1) of this section shall be made in writing addressed to the gaming operation.

(e) Failure to pay fees, any applicable penalties, and interest related thereto may be grounds for:

(1) Closure, or

(2) Disapproving or revoking the approval of the Chairman of any license, ordinance, or resolution required under this Act for the operation of gaming.

(f) To the extent that revenue derived from fees imposed under the schedule established under this paragraph are not expended or committed at the close of any fiscal year, such funds shall remain available until expended (Pub. L. 101–121; 103 Stat. 718; 25 U.S.C. 2717a) to defray the costs of operations of the Commission.

(g) The information collection requirements contained in paragraph (c) of this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 3200–0011. The information is being collected to determine the assessable gross revenues of each gaming operation and the aggregate assessable gross revenues of all gaming operations. The information will be used to set and adjust fee rates and to verify the computations of fees paid by each class II gaming operation. Response is mandatory.

[56 FR 40709, Aug. 15, 1991; 56 FR 57373, Nov. 8, 1991]

PART 515—PRIVACY ACT PROCEDURES

Sec.

515.1 Purpose and scope.
515.2 Definitions.
515.3 Identification of individuals making requests.
515.4 Procedures for requests and disclosures.
515.5 Request for amendment to record.
515.6 Review of request for amendment of record by the Records Manager.
515.7 Appeal to the Commission of initial adverse agency determination on access or amendment to records.
515.8 Disclosure of record to a person other than the individual to whom it pertains.
515.9 Fees.

515.10 Penalties.
515.11 General exemptions. [Reserved]
515.12 Specific exemptions.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 58 FR 5815, Jan. 22, 1993, unless otherwise noted.

§ 515.1 Purpose and scope.

(a) The purpose of this part is to inform the public of records maintained by the Commission about identifiable individuals and to inform those individuals how they may gain access to and amend records concerning themselves.

(b) This part carries out the requirements of the Privacy Act of 1974 (Pub. L. 93–579) codified at 5 U.S.C. 552a.

(c) The regulation applies only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to 5 U.S.C. 552, the Freedom of Information Act.

§ 515.2 Definitions.

As defined in the Privacy Act of 1974 and for the purposes of this part, unless otherwise required by the context, the following terms shall have these meanings:

(a) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) *Maintain* means maintain, collect, use, or disseminate.

(c) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifier assigned to the individual, such as social security number, finger or voice print, or a photograph.

(d) *System of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to the individual.

(e) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected.

§ 515.3 Identification of individuals making requests.

(a) Any individual may request that the Commission inform him or her whether a particular record system named by the individual contains a record pertaining to him or her and the contents of such record. Such requests shall conform to the requirements of § 515.4 of this part. The request may be made in person or in writing at the NIGC, suite 250, 1850 M Street, NW., Washington, DC 20036–5803 during the hours of 9 a.m. to 12 noon and 2 p.m. to 5 p.m. Monday through Friday.

(b)(1) Requests made in writing shall include a statement, signed by the individual and either notarized or witnessed by two persons (including witnesses' addresses). If the individual appears before a notary, the individual shall submit adequate proof of identity in the form of a driver's license, birth certificate, passport, or other identification acceptable to the notary. If the statement is witnessed, it shall include a statement above the witnesses' signatures that they personally know the individual or that the individual has submitted proof of his or her identity to their satisfaction. In any case in which, because of the extreme sensitivity of the record sought to be seen or copied, the Commission determines that the identification is not adequate, it may request the individual to submit additional proof of identity.

(2) If the request is made in person, the requester shall submit proof of identity similar to that described in paragraph (b)(1) of this section, and that is acceptable to the Commission. The individual may have a person of his or her own choosing accompany him or her when the record is disclosed.

(c) Requests made by an agent, parent, or guardian shall be in accordance with the procedures described in paragraph (b) of this section.

§ 515.4 Procedures for requests and disclosures.

(a) Requests for a determination under § 515.3(a) of this part shall be acknowledged by the Commission within

ten (10) days (excluding Saturdays, Sundays and Federal holidays) after the date on which the Commission receives the request. If the Commission is unable to locate the information requested, it shall so notify the individual within ten (10) days (excluding Saturdays, Sundays and Federal holidays) after receipt of the request, Such acknowledgement may request additional information to assist the Commission in locating the record, or it may advise the individual that no record exists about that individual.

(b)(1) Upon submission of proof of identity as required by §515.3(b)(1) or (2) of this part, the Commission shall respond within ten (10) days (excluding Saturdays, Sundays and Federal holidays). The Commission shall decide whether to make a record available to the record subject and shall immediately convey its determination to the requester. If the individual asks to see the record, the Commission may make the record available at the location where the record is maintained.

(2) The Commission shall furnish each record requested by an individual under this section in a form intelligible to that individual.

(3) If the Commission denies access to a record to an individual, that person shall be advised of the reason for the denial and of the appeal procedures provided in §515.7 of this part.

(4) Upon request, an individual shall be provided access to the accounting of disclosures from his or her record under the same procedures as provided above and in §515.3 of this part.

§515.5 Request for amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished under this part, may request that the Commission amend all or any part of that record.

(b) Each individual requesting an amendment shall send the request to the Records Manager.

(c) Each request for an amendment of a record shall contain the following information:

(1) The name of the individual requesting the amendment;

(2) The name of the system of records in which the record sought to be amended is maintained;

(3) The location of the system of records from which the individual record was obtained;

(4) A copy of the record sought to be amended or a sufficiently detailed description of that record:

(5) A statement of the material in the record that the individual desires to amend;

(6) A statement of the basis for the requested amendment, including any material that the individual can furnish to substantiate the reasons for the amendment sought.

§515.6 Review of request for amendment of record by the Records Manager.

(a) The Records Manager shall, not later than ten (10) days (excluding Saturdays, Sundays and Federal holidays) after the receipt of a request for an amendment of a record under §515.5 of this part, acknowledge receipt of the request and inform the individual whether more information is required before the amendment can be considered.

(b) If more information is not required, within ten (10) days after receipt of the request (excluding Saturdays, Sundays and Federal holidays), the Records Manager shall either make the requested amendment or notify the individual of the Commission's refusal to do so, including in the notification the reasons for the refusal, and the appeal procedures provided in §515.7 of this part.

(c) The Records Manager shall make each requested amendment to a record if such amendment will tend to negate inaccurate, irrelevant, untimely, or incomplete material in the record.

(d) The Records Manager shall inform prior recipients of any amendment or notation of dispute of such individual's record. The individual may request a list of prior recipients if there exists an accounting of the disclosures.

§ 515.7 Appeal to the Commission of initial adverse agency determination on access or amendment to records.

(a) Any individual whose request for access or an amendment has been denied in whole or in part, may appeal the decision to the Commission no later than one hundred eighty (180) days after the adverse decision is rendered.

(b) The appeal shall be in writing and shall contain all of the following information:

(1) The name of the individual making the appeal;

(2) Identification of the record sought to be amended;

(3) The record system in which such record is contained;

(4) A short statement describing the amendment sought; and

(5) The name and location of the agency official who initially denied the amendment.

(c) Not later than thirty (30) days (excluding Saturdays, Sundays and Federal holidays) after the date on which the Commission receives the appeal, the Commission shall complete its review of the appeal and make a final decision thereon. For good cause shown, however, the Commission may extend such thirty (30) day period. If the Commission extends the period, the individual requesting the review shall be promptly notified of the extension and the anticipated date of a decision.

(d) After review of an appeal, the Commission shall send a written notice to the requester containing the following information:

(1) The decision and, if the denial is upheld, the reasons for the decision;

(2) The right of the requester to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission's denial of access or amendment. The Commission shall make this statement available to any person to whom the record is later disclosed, together with a brief statement, if appropriate, of the Commission's reasons for denying requested access or amendment. The Commission shall also send a copy of the statement to prior recipients of the individual's record; and

(3) The right of the requester to institute a civil action in a Federal district court for judicial review of the decision.

§ 515.8 Disclosure of record to a person other than the individual to whom it pertains.

(a) Any individual who desires to have a record covered by this part disclosed to or mailed to another person may designate such person and authorize such person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and notarized or witnessed as provided in § 515.3 of this part.

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court of competent jurisdiction to be incompetent, due to physical or mental incapacity or age, may act on behalf of that individual in any matter covered by this section. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, certified copy of court order, or similar documents, and proof of the individual's identity in a form that complies with § 515.3(b) of this part.

(c) An individual to whom a record is to be disclosed in person, pursuant to this section, may have a person of his or her own choosing accompany him or her when the record is disclosed.

§ 515.9 Fees.

The Commission shall not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of reviewing the record, the Commission shall not charge the individual for the cost of making that copy. Otherwise, the Commission may charge a fee sufficient to cover the cost of duplication.

§ 515.10 Penalties.

Any person who makes a false statement in connection with any request for a record, or an amendment thereto,

under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§515.11 General exemptions. [Reserved]

§515.12 Specific exemptions.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1) and (f):

Indian Gaming Individuals Records System

(b) The exemptions under paragraph (a) of this section apply only to the extent that information in this system is subject to exemption under 5 U.S.C. 552a(k)(2). When compliance would not appear to interfere with or adversely affect the overall responsibilities of the Commission with respect to licensing of key employees and primary management officials for employment in an Indian gaming operation, the applicable exemption may be waived by the Commission.

(c) Exemptions from the particular sections are justified for the following reasons:

(1) From 5 U.S.C. 552a(c)(3), because making available the accounting of disclosures to an individual who is the subject of a record could reveal investigative interest. This would permit the individual to take measures to destroy evidence, intimidate potential witnesses, or flee the area to avoid the investigation.

(2) From 5 U.S.C. 552a(d), (e)(1), and (f) concerning individual access to records, when such access could compromise classified information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a sensitive investigative technique, or pose a potential threat to the Commission or its employees or to law enforcement personnel. Additionally, access could reveal the identity of a source who provided information under an express promise of confidentiality.

(3) From 5 U.S.C. 552a(d)(2), because to require the Commission to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the length of time it is maintained, would create an impossible administrative and investigative burden by continually forcing the Commission to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From 5 U.S.C. 552a(e)(1) because:

(i) It is not always possible to determine relevance or necessity of specific information in the early stages of an investigation.

(ii) Relevance and necessity are matters of judgment and timing in that what appears relevant and necessary when collected may be deemed unnecessary later. Only after information is assessed can its relevance and necessity be established.

(iii) In any investigation the Commission may receive information concerning violations of law under the jurisdiction of another agency. In the interest of effective law enforcement and under 25 U.S.C. 2716(b), the information could be relevant to an investigation by the Commission.

(iv) In the interviewing of individuals or obtaining evidence in other ways during an investigation, the Commission could obtain information that may or may not appear relevant at any given time; however, the information could be relevant to another investigation by the Commission.

PART 516—[RESERVED]

PART 517—FREEDOM OF INFORMATION ACT PROCEDURES

Sec.

517.1 Purpose and scope.
517.2 Definitions.
517.3 Requests for records.
517.4 Disclosure of requested records.
517.5 Confidential commercial information.
517.6 Response to requests for records.
517.7 Appeals.
517.8 Fees.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 58 FR 44448, Aug. 23, 1993, unless otherwise noted.

§517.1 Purpose and scope.

This part contains the regulations of the National Indian Gaming Commission implementing the Freedom of Information Act (FOIA). These regulations provide procedures by which

members of the public may obtain access to records compiled, created, and maintained by the Commission, along with procedures the Commission must follow in response to such requests for records.

§ 517.2 Definitions.

(a) *Commercial-use requester* means requesters seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Commission shall determine the use to which a requester will put the documents requested. Where the Commission has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Commission shall seek additional clarification before assigning the request to a specific category.

(b) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from disclosure under Exemption 4 of the FOIA, because disclosure could reasonably be expected to cause substantial competitive harm.

(c) *Direct costs* means those expenditures by the Commission actually incurred in searching for and duplicating records to respond to a FOIA request. Direct costs include the salary of the employee or employees performing the work (the basic rate of pay for the employee plus a percentage of that rate to cover benefits) and the cost of operating duplicating machinery. Direct costs do not include overhead expenses, such as the cost of and heating or lighting of the facility in which the records are stored.

(d) *Duplication* refers to the process of making a copy of a document necessary to fulfill a FOIA request. Such copies can take the form of, among other things, paper copy, microform, audio-visual materials, or machine-readable documentation. The copies provided shall be in a form that is reasonably usable by requesters.

(e) *Educational institution* refers to a preschool, a public or private elementary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research.

(f) *Freedom of Information Act Officer* means the person designated by the Chairman to administer the FOIA.

(g) *Non-commercial scientific institution* refers to an institution that is not operated on a ''commercial'' basis as that term is used in § 517.2(a), commercial-use requester, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(h) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public.

(i) *Requester* means any person, including an individual, Indian tribe, partnership, corporation, association, or public or private organization other than a Federal agency, that requests access to records in the possession of the Commission.

(j) *Review* refers to the process of examining a record, in response to a FOIA request, to determine whether any portion of that record may be withheld under one or more of the FOIA Exemptions. It also includes processing of any record for disclosure, for example, redacting information that is exempt from disclosure under the FOIA. *Review* does not include time spent resolving general legal or policy issues regarding the use of FOIA Exemptions.

(k) *Search* refers to the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within a document. The Commission shall ensure that searches are conducted in the most efficient and least expensive manner reasonably possible.

(l) *Submitter* means any person or entity who provides information directly or indirectly to the Commission. The term includes, but is not limited to,

corporations, Indian tribal governments, state governments and foreign governments.

(m) *Working day* means a federal workday that does not include Saturdays, Sundays or federal holidays.

§517.3 Requests for records.

(a) *Form of requests.* Requests for records made pursuant to the FOIA may be in writing, specifically invoke the Act, and be addressed to the FOIA Officer, Suite 250, 1850 M St., NW., Washington, DC 20036–5803. Requests may also be made in person at the same address, where records will be available for inspection on the premises. Requests for records shall describe the records requested with enough specificity to enable Commission employees to locate the information requested with a reasonable amount of effort. Requests shall also include a statement of the maximum amount of fees the requester is willing to pay to obtain the requested information, or if a waiver or reduction of fees seems appropriate, the reasons for such waiver or reduction.

(b) *Types of records not available.* The FOIA does not require the Commission to:

(1) Compile or create records solely for the purpose of satisfying a request for records;

(2) Provide records not yet in existence, even if such records may be expected to come into existence at some future time; or

(3) Restore records destroyed or otherwise disposed of, except that the FOIA Officer must notify the requester that the requested records have been destroyed or disposed of.

§517.4 Disclosure of requested records.

(a) The FOIA Officer shall make requested records available to the public to the greatest extent possible in keeping with the FOIA, except that the following records are exempt from the disclosure requirements:

(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which are, in fact, properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of the Commission;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. §552(b)) provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or that the statute establishes particular criteria for withholding information or refers to particular types of matters to be withheld;

(4) Records containing trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a recorded or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement

investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Records contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Geological or geophysical information and data, including maps, concerning wells.

(b) If a requested record contains exempted material along with nonexempted material, all reasonable segregable nonexempt material shall be disclosed.

(c) The FOIA Officer may disclose requested information falling within the exemptions of paragraphs (a)(1)–(a)(3), (a)(5), (a)(6), (a)(8) and (a)(9) of this section, if to do so would further the purposes and policies of the FOIA and the IGRA. The FOIA Officer shall not disclose requested information falling within the exemptions of paragraphs (a)(4) and (a)(7) of this section.

§ 517.5 Confidential commercial information.

(a) *Notice to submitters.* The Commission shall, to the extent permitted by law, provide a submitter who provides confidential commercial information to the Commission, with prompt notice of a FOIA request or administrative appeal encompassing the confidential commercial information if the Commission may be required to disclose the information under the FOIA. Such notice shall either describe the exact nature of the information requested or provide copies of the records or portions thereof containing the confidential commercial information. The Commission shall also notify the requester that notice and an opportunity to object has been given to the submitter.

(b) *When notice is required.* Notice shall be given to a submitter when:

(1) The information has been designated by the submitter as confidential commercial information protected from disclosure. Submitters of confidential commercial information shall use good faith efforts to designate, either at the time of submission or a reasonable time thereafter, those portions of their submissions they deem protected from disclosure under Exemption 4 of the FOIA because disclosure could reasonably be expected to cause substantial competitive harm. Such designation shall be deemed to have expired ten years after the date of submission, unless the requester provides reasonable justification for a designation period of greater duration; or

(2) The FOIA Officer has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA.

(c) *Opportunity to object to disclosure.* The Commission shall afford a submitter a reasonable period of time to provide the Commission with a detailed written statement of any objection to disclosure. The statement shall specify all grounds for withholding any of the information under any exemption of the FOIA, and if Exemption 4 applies, shall demonstrate the reasons the submitter believes the information to be confidential commercial information that is exempt from disclosure. Whenever possible, the submitters claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(d) *Notice of intent to disclose.* The FOIA Officer shall carefully consider a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the information requested. Whenever the FOIA Officer determines that disclosure is appropriate, the FOIA Officer shall, within a reasonable number of days prior to disclosure, provide the submitter with written notice of the intent to disclose which shall include a statement of the reasons for which the submitter's objections were overruled, a description of the information to be disclosed, and a specified disclosure date. The FOIA Officer shall also notify the requester that the requested records will be made available.

(e) *Notice of lawsuit.* When a requester brings suit seeking to compel disclosure of confidential commercial information, the FOIA Officer shall promptly notify the submitter of this action.

(f) *Exceptions to the notice requirements under this section.* The notice requirements under paragraphs (a) and (b) of this section shall not apply if:

(1) The FOIA Officer determines that the information should not be disclosed;

(2) The information lawfully has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than the FOIA);

(4) The information requested is not designated by the submitter as exempt from disclosure in accordance with this part, when the submitter had the opportunity to do so at the time of submission of the information or within a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with this part appears obviously frivolous. When the FOIA Officer determines that a submitter was frivolous in designating information as confidential, the FOIA Officer must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date, but no opportunity to object to disclosure will be offered.

§517.6 Response to requests for records.

(a) *Initial determinations.* (1) The FOIA Officer shall make an initial determination regarding access to the requested information and shall so notify the requester within ten (10) working days after receipt of the request. This 10-day period may be extended ten (10) additional working days if unusual circumstances arise. If an extension is necessary, the FOIA Officer shall promptly notify the requester of the extension, briefly stating the reasons for the extension, and estimating when the FOIA Officer will respond. Unusual circumstances warranting extension are:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of records which are demanded in a single request; or

(iii) The need for consultation with another agency having a substantial interest in the determination of the request, which consultation shall be conducted with all practicable speed.

(2) If the FOIA Officer decides that an initial determination cannot be reached within the time limits specified in paragraph (a)(1) of this section, he or she shall notify the requester of the reasons for the delay and include an estimate of when a determination will be made.

(3) If no initial determination has been made at the end of the 10-day period provided in paragraph (a)(1) of this section, including any extension, the requester may appeal the action to the FOIA Appeals Officer.

(4) If the FOIA Officer determines that another agency is responsible for responding to a request or part thereof, the FOIA Officer shall refer such request to the appropriate agency. The FOIA Officer shall inform the requester of the referral and of the name and address of the agency or agencies to which the request has been referred.

(b) *Granting of requests.* When the FOIA Officer determines that the requested records shall be made available, he or she shall:

(1) Provide copies of the requested records; or

(2) Notify the requester of his or her decision, including a brief statement of when and how the records will be provided. Requested records shall then be promptly made available.

(c) *Denial of requests.* When the FOIA Officer determines that access to requested records should be denied, he or she shall notify the requester of the denial, the grounds for withholding the records, and the procedures for appeal of the denial.

§ 517.7 Appeals.

(a) *Right of appeal.* A requester may appeal to the FOIA Appeals Officer any adverse determination.

(b) *Notice of appeal.*

(1) *Time for appeal.* An appeal must be received no later than thirty (30) working days after notification of denial of access or after the time limit for response by the FOIA Officer has expired.

(2) *Form of appeal.* An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial. To expedite the appellate process and give the requester an opportunity to present his or her arguments, the notice should contain a brief statement of the reasons why the requester believes the initial denial to have been in error. The appeal shall be addressed to the Freedom of Information Act Appeals Officer, National Indian Gaming Commission, 1850 M St., NW., suite 250, Washington, DC 20036.

(c) *Final agency determinations.* The FOIA Appeals Officer shall issue a final written determination, stating the basis for its decision, within twenty (20) working days after receipt of a notice of appeal. If the determination is to provide access to the requested records, the FOIA Officer shall make those records immediately available to the requester. If the determination upholds the denial of access to the requested records, the FOIA Appeals Officer shall notify the requester of the determination and the right of the requester to obtain judicial review in the appropriate federal district court.

§ 517.8 Fees.

(a) *In general.* Fees pursuant to the FOIA shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by the Commission in response to requests for records under this part. All fees shall be charged to the requester, except where the charging of fees is limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (c) of this section. Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Charges for responding to FOIA requests.* The following fees shall be assessed in responding to requests for records submitted under this part, unless a waiver or reduction of fees has been granted pursuant to paragraph (c) of this section:

(1) *Copies.* The Commission shall charge $0.10 per page for copies of documents up to 8½″ x 14″. For copies prepared by computer, the Commission will charge actual costs of production of the computer printouts, including operator time. For other methods of reproduction, the Commission shall charge the actual costs of producing the documents.

(2) *Searches.* (i) *Manual searches.* Whenever feasible, the Commission will charge at the salary rate (basic pay plus a percent for benefits) of the employee or employees performing the search. However, where a homogenous class of personnel is used exclusively in a search (e.g. all administrative/clerical or all professional/executive), the Commission shall charge $12.50 per hour for clerical time and $30.00 per hour for professional time. Charges for search time less than a full hour will be in increments of quarter hours.

(ii) *Computer searches.* The Commission will charge the actual direct costs of conducting computer searches. These direct costs shall include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for requested records, as well as the costs of operator/programmer salary apportionable to the search. The Commission is not required to alter or develop programming to conduct searches.

(3) *Review fees.* Review fees shall be assessed only with respect to those requesters who seek records for a commercial use under paragraph (d)(1) of this section. Review fees shall be assessed at the same rates as those listed under paragraph (b)(2)(i) of this section. Review fees shall be assessed only for the initial record review, for example, review undertaken when the Commission analyzes the applicability of a particular exemption to a particular record or portion thereof at the initial

request level. No charge shall be assessed at the administrative appeal level of an exemption already applied.

(c) *Statutory waiver.* Documents shall be furnished without charge or at a charge below that listed in paragraphs (b) of this section where it is determined, based upon information provided by a requester or otherwise made known to the FOIA Officer, that disclosure of the requested information is in the public interest. Disclosure is in the public interest if it is likely to contribute significantly to public understanding of government operations and is not primarily for commercial purposes. Requests for a waiver or reduction of fees shall be considered on a case by case basis. In order to determine whether the fee waiver requirement is met, the FOIA Officer shall consider the following six factors:

(1) *The subject of the request.* Whether the subject of the requested records concerns the operations or activities of the government;

(2) *The informative value of the information to be disclosed.* Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(3) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to public understanding;

(4) *The significance of the contribution to public understanding.* Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(5) *The existence and magnitude of commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(d) *Types of requesters.* There are four categories of FOIA requesters: commercial use requesters, educational and non-commercial scientific institutional requesters, representatives of the news media, and all other requesters. These terms are defined in §517.2. Specific levels of fees are prescribed below for each of these categories.

(1) *Commercial-use requesters.* The FOIA Officer shall charge commercial use requesters the full direct costs of searching for, reviewing, and duplicating requested records.

(2) *Educational and non-commercial scientific institution requesters.* The FOIA Officer shall charge educational and non-commercial scientific institution requesters for document duplication only, except that the first 100 pages of copies shall be provided without charge.

(3) *News media requesters.* The FOIA Officer shall charge news media requesters for document duplication costs only, except that the first 100 pages of paper copies shall be provided without charge.

(4) *All other requesters.* The FOIA Officer shall charge requesters who do not fall into any of the above categories fees which recover the full reasonable direct costs incurred for searching for and reproducing records if that total cost exceeds $15.00, *except that* the first 100 pages and the first two hours of manual search time shall not be charged. To apply this term to computer searches, the FOIA Officer will determine the total hourly cost of operating the central processing unit and the operator's salary (plus 16 percent for benefits). When the cost of the search equals the equivalent dollar amount of two hours of the salary of the person performing the search, the FOIA Officer will begin assessing charges for the computer search.

(e) *Charges for unsuccessful searches.* Ordinarily, no charge will be assessed when requested records are not found or when the records located are withheld as exempt. However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees may be charged.

(f) *Charges for interest.* The FOIA Officer may assess interest charges on an unpaid bill, accrued under previous FOIA request(s), starting on the 31st

day following the day on which the bill was sent to the requester. A fee received by the FOIA Officer, even if not processed, will result in a stay of the accrual of interest. The Commission shall follow the provisions of the Debt Collection Act of 1982 and the implementing procedures to recover any indebtedness owed to the Commission.

(g) *Aggregating requests.* A requester or a group of requesters may not submit multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When the Commission reasonably believes that a requester is attempting to divide a request into a series of requests to evade an assessment of fees, the Commission may aggregate such request and charge accordingly.

(h) *Advance payment of fees.* Fees may be paid upon provision of the requested records, except that payment may be required prior to that time if the requester has previously failed to pay fees or if the FOIA Officer determines the total fee will exceed $250. When payment is required in advance of the processing of a request, the time limits prescribed in § 517.6 shall not be deemed to begin until the FOIA Officer has received payment of the assessed fee.

(i) *Payment of fees.* Where it is anticipated that the cost of providing the requested record will exceed $25.00 after the free duplication and search time has been calculated, and the requester has not indicated in advance a willingness to pay a fee greater than $25.00, the FOIA Officer shall promptly notify the requester of the amount of the anticipated fee or a portion thereof, which can readily be estimated. The notification shall offer the requesting party an opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet the requester's needs at a reduced cost.

PART 518—[RESERVED]

PART 519—SERVICE

Sec.

519.1 Designation of an agent by a tribe.
519.2 Designation of an agent by a management contractor or a tribal operator.
519.3 Methods of service.
519.4 Copy of any official determination, order, or notice of violation.

AUTHORITY: 25 U.S.C. 2706(b)(10).

SOURCE: 58 FR 5810, Jan. 22, 1993, unless otherwise noted.

§ 519.1 Designation of an agent by a tribe.

By written notification to the Commission, a tribe shall designate an agent for service of any official determination, order, or notice of violation.

§ 519.2 Designation of an agent by a management contractor or a tribal operator.

By written notification to the Commission, a management contractor or a tribal operator shall designate an agent for service of any official determination, order, or notice of violation.

§ 519.3 Methods of service.

(a) The Chairman shall serve any official determination, order, or notice of violation by:

(1) Delivering a copy to a designated agent;

(2) Delivering a copy to the person who is the subject of the official determination, order, or notice of violation;

(3) Delivering a copy to the individual who, after reasonable inquiry, appears to be in charge of the gaming operation that is the subject of the official determination, order, or notice of violation;

(4) Mailing to the person who is the subject of the official determination, order, or notice of violation or to his or her designated agent at the last known address. Service by mail is complete upon mailing; or

(5) Transmitting a facsimile to the person who is the subject of the official determination, order, or notice of violation or to his or her designated agent at the last known facsimile number. Service by facsimile is complete upon transmission.

(b) Delivery of a copy means: Handing it to the person or designated agent (or attorney for either); leaving a copy at the person's, agent's or attorney's office with a clerk or other person in charge thereof; if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed

or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(c) Service shall not be deemed incomplete because of refusal to accept.

§519.4 Copy of any official determination, order, or notice of violation.

The Commission shall transmit a copy of any official determination, order, or notice of violation to the tribal chairman, the designated tribal agent under §519.1, and to the relevant tribal gaming authority. The Commission shall transmit such copy as expeditiously as possible. Service under §519.3 shall not depend on a copy being sent to the appropriate tribal chairman, the designated tribal agent or to the relevant tribal gaming authority.

SUBCHAPTER B—APPROVAL OF CLASS II AND CLASS III ORDINANCES AND RESOLUTIONS

PARTS 520—521—[RESERVED]

PART 522—SUBMISSION OF GAMING ORDINANCE OR RESOLUTION

Sec.
522.1 Scope of this part.
522.2 Submission requirements.
522.3 Amendment.
522.4 Approval requirements for class II ordinances.
522.5 Disapproval of a class II ordinance.
522.6 Approval requirements for class III ordinances.
522.7 Disapproval of a class III ordinance.
522.8 Publication of class III ordinance and approval.
522.9 Substitute approval.
522.10 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.
522.11 Individually owned class II gaming operations operating on September 1, 1986.
522.12 Revocation of class III gaming.

AUTHORITY: 25 U.S.C. 2706, 2710, 2712

SOURCE: 58 FR 5810, Jan. 22, 1993, unless otherwise noted.

§ 522.1 Scope of this part.

This part applies to any gaming ordinance or resolution adopted by a tribe after February 22, 1993. Part 523 of this chapter applies to all existing gaming ordinances or resolutions.

[58 FR 5810, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 522.2 Submission requirements.

A tribe shall submit to the Chairman all of the following information with a request for approval of a class II or class III ordinance or resolution:

(a) One copy on 8½″ x 11″ paper of an ordinance or resolution certified as authentic by an authorized tribal official and that meets the approval requirements in § 522.4(b) or 522.6 of this part;

(b) A description of procedures to conduct or cause to be conducted background investigations on key employees and primary management officials and to ensure that key employees and primary management officials are notified of their rights under the Privacy Act as specified in § 556.2 of this chapter;

(c) A description of procedures to issue tribal licenses to primary management officials and key employees;

(d) Copies of all tribal gaming regulations;

(e) When an ordinance or resolution concerns class III gaming, a copy of the tribal-state compact or procedures as prescribed by the Secretary;

(f) A description of procedures for resolving disputes between the gaming public and the tribe or the management contractor;

(g) Designation of an agent for service under § 519.1 of this chapter; and

(h) Identification of a law enforcement agency that will take fingerprints and a description of procedures for conducting a criminal history check by a law enforcement agency. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

[58 FR 5810, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 522.3 Amendment.

(a) Within 15 days after adoption, a tribe shall submit for the Chairman's approval any amendment to an ordinance or resolution.

(b) A tribe shall submit for the Chairman's approval any amendment to the submissions made under §§ 522.2(b) through (h) of this part within 15 days after adoption of such amendment.

§ 522.4 Approval requirements for class II ordinances.

No later than 90 days after the submission to the Chairman under § 522.2 of this part, the Chairman shall approve the class II ordinance or resolution if the Chairman finds that—

(a) A tribe meets the submission requirements contained in § 522.2 of this part; and

(b) The class II ordinance or resolution provides that—

(1) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under either §522.10 or §522.11 of this part;

(2) A tribe shall use net revenues from any tribal gaming or from any individually owned games only for one or more of the following purposes:

(i) To fund tribal government operations or programs;

(ii) To provide for the general welfare of the tribe and its members (if a tribe elects to make per capita distributions, the plan must be approved by the Secretary of the Interior under 25 U.S.C. 2710(b)(3));

(iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government agencies;

(3) A tribe shall cause to be conducted independent audits of gaming operations annually and shall submit the results of those audits to the Commission;

(4) All gaming related contracts that result in purchases of supplies, services, or concessions for more than $25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted under paragraph (b)(3) of this section;

(5) A tribe shall perform background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those in parts 556 and 558 of this chapter;

(6) A tribe shall issue a separate license to each place, facility, or location on Indian lands where a tribe elects to allow class II gaming; and

(7) A tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety.

§522.5 Disapproval of a class II ordinance.

No later than 90 days after a tribe submits an ordinance for approval under §522.2 of this part, the Chairman may disapprove an ordinance if he or she determines that a tribe failed to comply with the requirements of §522.2 or §522.4(b) of this part. The Chairman shall notify a tribe of its right to appeal under part 524 of this chapter. A disapproval shall be effective immediately unless appealed under part 524 of this chapter.

§522.6 Approval requirements for class III ordinances.

No later than 90 days after the submission to the Chairman under §522.2 of this part, the Chairman shall approve the class III ordinance or resolution if—

(a) A tribe follows the submission requirements contained in §522.2 of this part;

(b) The ordinance or resolution meets the requirements contained in §522.4(b)(2), (3), (4), (5), (6), and (7) of this part; and

(c) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under §522.10 of this part.

§522.7 Disapproval of a class III ordinance.

(a) Notwithstanding compliance with the requirements of §522.6 of this part and no later than 90 days after a submission under §522.2 of this part, the Chairman shall disapprove an ordinance or resolution and notify a tribe of its right of appeal under part 524 of this chapter if the Chairman determines that—

(1) A tribal governing body did not adopt the ordinance or resolution in compliance with the governing documents of a tribe; or

(2) A tribal governing body was significantly and unduly influenced in the adoption of the ordinance or resolution by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

(b) A disapproval shall be effective immediately unless appealed under part 524 of this chapter.

§ 522.8 Publication of class III ordinance and approval.

The Chairman shall publish a class III tribal gaming ordinance or resolution in the FEDERAL REGISTER along with the Chairman's approval thereof.

§ 522.9 Substitute approval.

If the Chairman fails to approve or disapprove an ordinance or resolution submitted under § 522.2 of this part within 90 days after the date of submission to the Chairman, a tribal ordinance or resolution shall be considered to have been approved by the Chairman but only to the extent that such ordinance or resolution is consistent with the provisions of the Act and this chapter.

§ 522.10 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.

For licensing of individually owned gaming operations other than those operating on September 1, 1986 (addressed under § 522.11 of this part), a tribal ordinance shall require:

(a) That the gaming operation be licensed and regulated under an ordinance or resolution approved by the Chairman;

(b) That income to the tribe from an individually owned gaming operation be used only for the purposes listed in § 522.4(b)(2) of this part;

(c) That not less than 60 percent of the net revenues be income to the Tribe;

(d) That the owner pay an assessment to the Commission under § 514.1 of this chapter;

(e) Licensing standards that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the surrounding State; and

(f) Denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding State. State law standards shall apply with respect to purpose, entity, pot limits and hours of operation.

§ 522.11 Individually owned class II gaming operations operating on September 1, 1986.

For licensing of individually owned gaming operations operating on September 1, 1986, under § 502.3(e) of this chapter, a tribal ordinance shall contain the same requirements as those in § 522.10(a)–(d) of this part.

§ 522.12 Revocation of class III gaming.

A governing body of a tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorizes class III gaming.

(a) A tribe shall submit to the Chairman on 8½″ x 11″ paper one copy of any revocation ordinance or resolution certified as authentic by an authorized tribal official.

(b) The Chairman shall publish such ordinance or resolution in the FEDERAL REGISTER and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(c) Notwithstanding any other provision of this section, any person or entity operating a class III gaming operation on the date of publication in the FEDERAL REGISTER under paragraph (b) of this section may, during a one-year period beginning on the date of publication, continue to operate such operation in conformance with a tribal-state compact.

(d) A revocation shall not affect—

(1) Any civil action that arises during the one-year period following publication of the revocation; or

(2) Any crime that is committed during the one-year period following publication of the revocation.

PART 523—REVIEW AND APPROVAL OF EXISTING ORDINANCES OR RESOLUTIONS

Sec.
523.1 Scope of this part.
523.2 Submission requirements.
523.3 Review of an ordinance or resolution.
523.4 Review of an amendment.

AUTHORITY: 25 U.S.C. 2706, 2710, 2712.

SOURCE: 58 FR 5812, Jan. 22, 1993, unless otherwise noted.

§523.1 Scope of this part.

This part applies to a class II or a class III gaming ordinance or resolution enacted by a tribe prior to February 22, 1993, and that has not been submitted to the Chairman.

[58 FR 5810, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§523.2 Submission requirements.

(a) Within 60 days after a request by the Chairman, a tribe shall:

(1) Submit for review and approval all items required under §522.2 of this chapter; and

(2) For each gaming operation submit the financial statements for the previous fiscal year and the most recent audit report and management letter.

(b) If a tribe fails to submit all items under §522.2 of this chapter within 60 days, the Chairman shall deem the ordinance or resolution disapproved and shall notify the tribe of its right to appeal under part 524.

§523.3 Review of an ordinance or resolution.

Within 90 days after receipt of a submission under §523.2 of this part, the Chairman shall subject the ordinance or resolution to the standards in part 522 of this chapter.

(a) For class II and class III gaming, if the Chairman determines that an ordinance or resolution submitted under this part meets the approval and submission requirements of part 522 of this chapter and the Chairman finds the annual financial statements are included in the submission, the Chairman shall approve the ordinance or resolution.

(b) If an ordinance or resolution fails to meet the requirements for review under part 522 of this chapter or if a tribe fails to submit the annual financial statement, the Chairman shall notify a tribe in writing of the specific areas of noncompliance.

(c) The Chairman shall allow a tribe 120 days from receipt of such notice to bring the ordinance or resolution into compliance with the requirements of part 522 of this chapter or to submit an annual financial statement, or both.

(d) At the end of the 120-day period provided under paragraph (c) of this section, or earlier if the tribe notifies the Chairman that it intends not to comply, the Chairman shall disapprove any ordinance or resolution if a tribe fails to amend according to the notification made under paragraph (b) of this section.

§523.4 Review of an amendment.

Within 90 days after receipt of an amendment, the Chairman shall subject the amendment to the standards in part 522 of this chapter.

(a) If the Chairman determines that an amendment meets the approval and submission requirements of part 522 of this chapter, the Chairman will approve the amendment.

(b) If an amendment fails to meet the requirements for review under part 522 of this chapter, the Chairman shall notify the tribe in writing of the specific areas of noncompliance.

(c) If the Chairman fails to disapprove a submission under paragraph (a) or (b) of this section within 90 days after the date of submission to the Chairman, a tribal amendment shall be considered to have been approved by the Chairman but only to the extent that such amendment is consistent with the provisions of the Act and this chapter.

PART 524—APPEALS

Sec.
524.1 Appeals by a tribe.
524.2 Limited participation by an entity other than a tribe.
524.3 Decision on appeals.

AUTHORITY: 25 U.S.C. 2706, 2710, 2712.

SOURCE: 58 FR 5812, Jan. 22, 1993, unless otherwise noted.

§524.1 Appeal by a tribe.

A tribe may appeal disapproval of a gaming ordinance, resolution or amendment under part 522 or 523 of this chapter. An appeal shall be filed with the Commission within 30 days after the Chairman serves his or her determination under part 519 of this chapter. Such an appeal shall state succinctly why the tribe believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Failure to file an appeal within the time provided by

this section shall result in a waiver of the opportunity for an appeal.

§ 524.2 Limited participation by an entity other than a tribe.

(a) An entity other than a tribe may request to participate in an appeal of a disapproval under part 522 or part 523 of this chapter by filing a written submission. Such written submission shall:

(1) State the property, financial, or other interest of the party in the appeal; and

(2) The reasons why the action of the Chairman in disapproving an ordinance, resolution or amendment may be in error or the reasons why the Chairman's disapproval should be upheld by the Commission. The reasons shall address the approval requirements under §§ 522.4, 522.5, 522.6, 522.7, 523.2 of this chapter.

(b) The Commission shall forward a copy of a request under paragraph (a) of this section to the party of record under § 524.1 of this part.

(c) The Commission shall review a request under this section and timely notify the requester of its determination. Such notification shall supply the reasons for the determination. The Commission shall also notify the party of record on appeal under § 524.1 of its determination.

(d) The Commission shall limit the extent of participation by an entity other than a tribe to one written submission as described under paragraph (a) of this section, unless the Commission determines further participation would substantially contribute to the record.

§ 524.3 Decisions on appeals.

(a) Within 90 days after it receives the appeal, the Commission shall render its decision on the appeal.

(b) The Commission shall notify the party of record under § 524.1 of this part and any limited participant under § 524.2 of this part of its final decision and the reasons supporting it.

PARTS 525—529—[RESERVED]

SUBCHAPTER C—MANAGEMENT CONTRACT PROVISIONS

PART 530—[RESERVED]

PART 531—CONTENT OF MANAGEMENT CONTRACTS

Sec.
531.1 Required provisions.
531.2 Prohibited provisions.

AUTHORITY: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

SOURCE: 58 FR 5828, Jan. 22, 1993, unless otherwise noted.

§531.1 Required provisions.

A management contract previously approved by the Secretary of the Interior shall conform to the requirements contained in paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of this section and a management contract not previously approved by the Secretary shall conform to all of the requirements contained in this section in the manner indicated.

(a) *Governmental authority.* Provide that all gaming covered by the contract will be conducted in accordance with the Indian Gaming Regulatory Act (IGRA, or the Act) and governing tribal ordinance(s).

(b) *Assignment of responsibilities.* Enumerate the responsibilities of each of the parties for each identifiable function, including:

(1) Maintaining and improving the gaming facility;

(2) Providing operating capital;

(3) Establishing operating days and hours;

(4) Hiring, firing, training and promoting employees;

(5) Maintaining the gaming operation's books and records;

(6) Preparing the operation's financial statements and reports;

(7) Paying for the services of the independent auditor engaged pursuant to §571.12 of this chapter;

(8) Hiring and supervising security personnel;

(9) Providing fire protection services;

(10) Setting advertising budget and placing advertising;

(11) Paying bills and expenses;

(12) Establishing and administering employment practices;

(13) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;

(14) Complying with all applicable provisions of the Internal Revenue Code;

(15) Paying the cost of any increased public safety services; and

(16) If applicable, supplying the National Indian Gaming Commission (NIGC, or the Commission) with all information necessary for the Commission to comply with the regulations of the Commission issued pursuant to the National Environmental Policy Act (NEPA).

(c) *Accounting.* Provide for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

(1) Include an adequate system of internal accounting controls;

(2) Permit the preparation of financial statements in accordance with generally accepted accounting principles;

(3) Be susceptible to audit;

(4) Allow a class II gaming operation, the tribe, and the Commission to calculate the annual fee under §514.1 of this chapter;

(5) Permit the calculation and payment of the manager's fee; and

(6) Provide for the allocation of operating expenses or overhead expenses among the tribe, the tribal gaming operation, the contractor, and any other user of shared facilities and services.

(d) *Reporting.* Require the management contractor to provide the tribal governing body not less frequently than monthly with verifiable financial reports or all information necessary to prepare such reports.

(e) *Access.* Require the management contractor to provide immediate access to the gaming operation, including its books and records, by appropriate tribal officials, who shall have:

(1) The right to verify the daily gross revenues and income from the gaming operation; and

(2) Access to any other gaming-related information the tribe deems appropriate.

(f) *Guaranteed payment to tribe.* Provide for a minimum guaranteed monthly payment to the tribe in a sum certain that has preference over the retirement of development and construction costs.

(g) *Development and construction costs.* Provide an agreed upon maximum dollar amount for the recoupment of development and construction costs.

(h) *Term limits.* Be for a term not to exceed five (5) years, except that upon the request of a tribe, the Chairman may authorize a contract term that does not exceed seven (7) years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming operation require the additional time. The time period shall begin running no later than the date when the gaming activities authorized by an approved management contract begin.

(i) *Compensation.* Detail the method of compensating and reimbursing the management contractor. If a management contract provides for a percentage fee, such fee shall be either:

(1) Not more than thirty (30) percent of the net revenues of the gaming operation if the Chairman determines that such percentage is reasonable considering the circumstances; or

(2) Not more than forty (40) percent of the net revenues if the Chairman is satisfied that the capital investment required and income projections for the gaming operation require the additional fee.

(j) *Termination provisions.* Provide the grounds and mechanisms for modifying or terminating the contract (termination of the contract shall not require the approval of the Chairman).

(k) *Dispute provisions.* Contain a mechanism to resolve disputes between:

(1) The management contractor and customers, consistent with the procedures in a tribal ordinance;

(2) The management contractor and the tribe; and

(3) The management contractor and the gaming operation employees.

(l) *Assignments and subcontracting.* Indicate whether and to what extent contract assignments and subcontracting are permissible.

(m) *Ownership interests.* Indicate whether and to what extent changes in the ownership interest in the management contract require advance approval by the tribe.

(n) *Effective date.* State that the contract shall not be effective unless and until it is approved by the Chairman, date of signature of the parties notwithstanding.

§ 531.2 Prohibited provisions.

A management contract shall not transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in the contract.

PART 532—[RESERVED]

PART 533—APPROVAL OF MANAGEMENT CONTRACTS

Sec.
533.1 Requirement for review and approval.
533.2 Time for submitting management contracts.
533.3 Submission of management contract for approval.
533.4 Action by the Chairman.
533.5 Notice of noncompliance.
533.6 Approval.
533.7 Void agreements.

AUTHORITY: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

SOURCE: 58 FR 5829, Jan. 22, 1993, unless otherwise noted.

§ 533.1 Requirement for review and approval.

Subject to the Chairman's approval, an Indian tribe may enter into a management contract for the operation of a class II or class III gaming activity.

(a) Such contract shall become effective upon approval by the Chairman.

(b) Contract approval shall be evidenced by a Commission document dated and signed by the Chairman. No other means of approval shall be valid.

(c) Contracts approved by the Secretary remain effective until approved or disapproved by the Chairman.

§533.2 Time for submitting management contracts.

A tribe or a management contractor shall submit a management contract to the Chairman for review as follows:

(a) Contracts approved by the Secretary, within sixty (60) days after a request by the Chairman. If a tribe or a management contractor fail to submit all items under §533.3 of this part within 60 days, the Chairman may deem the contract disapproved and shall notify the parties of their rights to appeal under part 539 of this chapter.

(b) All other contracts, upon execution.

§533.3 Submission of management contract for approval.

A tribe shall include in any request for approval of a management contract under this part:

(a) A contract containing:

(1) Original signatures of an authorized official of the tribe and the management contractor;

(2) A representation that the contract as submitted to the Chairman is the entirety of the agreement among the parties; and

(3)(i) If the contract has been approved by the Secretary, terms that meet the requirements of §§531.1(c), (d), (e), (f), (g), (h), (i), and (j) and §531.2 of this chapter; or

(ii) Terms that meet the requirements of part 531 of this chapter.

(b) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the management contract.

(c) Copies of documents evidencing the authority under paragraph (b) of this section.

(d) A list of all persons and entities identified in §§537.1(a) and 537.1(c)(1) of this chapter, and either:

(1) The information required under §537.1(b)(1) of this chapter for Class II gaming contracts and §537.1(b)(1)(i) of this chapter for class III gaming contracts; or

(2) The dates on which the information was previously submitted.

(e)(1) For new contracts and new operations, a three (3)-year business plan which sets forth the parties' goals, objectives, budgets, financial plans, and related matters; or

(2) For existing contracts, income statements and sources and uses of funds statements for the previous three (3) years; or

(3) For new contracts for existing operations, a three (3) year business plan which sets forth the parties goals, objectives, budgets, financial plans, and related matters, and income statements and sources and uses of funds statements for the previous three (3) years.

(f) If applicable, a justification, consistent with the provisions of §531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years.

(g) If applicable, a justification, consistent with the provisions of §531.1(i) of this chapter, for a fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

§533.4 Action by the Chairman.

(a) The Chairman shall provide notice of noncompliance under §533.5 of this part, or shall approve or disapprove a management contract applying the standards contained in §533.6 of this part, within 180 days of the date on which the Chairman receives a complete submission under §533.3 of this part, unless the Chairman notifies the tribe and management contractor in writing of the need for an extension of up to ninety (90) days.

(b) A tribe may bring an action in a U.S. district court to compel action by the Chairman:

(1) After 180 days following the date on which the Chairman receives a complete submission if the Chairman does not provide notice of noncompliance or approve or disapprove the contract under this part; or

(2) After 270 days following the Chairman's receipt of a complete submission if the Chairman has told the tribe and management contractor in writing of the need for an extension and has not provided notice of noncompliance or approved or disapproved the contract under this part.

§533.5 Notice of noncompliance.

(a) If a management contract previously approved by the Secretary fails

to meet the requirements of this part, the Chairman shall notify the tribe and management contractor, in writing, of the specific areas of noncompliance.

(1) The Chairman shall allow the tribe and the management contractor 120 days from receipt of such notice to modify the contract.

(2) If the Secretary approved a management contract before October 17, 1988, the Chairman shall allow the tribe and the management contractor 180 days from receipt of such notification to modify the contract.

(b) If a tribe and a management contractor fail to modify a management contract within the time provided, the Chairman may:

(1) Disapprove the management contract, or

(2) Approve the management contract subject to the required modifications if:

(i) All modifications benefit the tribe;

(ii) The modifications are required to bring the contract into statutory compliance; and

(iii) The modifications are all agreed to by the management contractor.

§ 533.6 Approval.

(a) The Chairman may approve a management contract if it meets the standards of part 531 of this chapter and § 533.3 of this part;

(b) The Chairman shall disapprove a management contract for class II gaming if he or she determines that—

(1) Any person with a direct or indirect financial interest in, or having management responsibility for, a management contract:

(i) Is an elected member of the governing body of the tribe that is party to the management contract;

(ii) Has been convicted of any felony or any misdemeanor gaming offense;

(iii) Has knowingly and willfully provided materially false statements or information to the Commission or to a tribe;

(iv) Has refused to respond to questions asked by the Chairman in accordance with his responsibilities under this part; or

(v) Is determined by the Chairman to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements;

(2) The management contractor or its agents have unduly interfered with or influenced for advantage, or have tried to unduly interfere with or influence for advantage, any decision or process of tribal government relating to the gaming operation;

(3) The management contractor or its agents has deliberately or substantially failed to follow the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or

(4) A trustee, exercising the skill and diligence to which a trustee is commonly held, would not approve the contract.

(c) The Chairman may disapprove a management contract for class III gaming if he or she determines that a person with a financial interest in, or management responsibility for, a management contract is a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements.

§ 533.7 Void agreements.

Management contracts and changes in persons with a financial interest in or management responsibility for a management contract, that have not been approved by the Secretary of the Interior or the Chairman in accordance with the requirements of this part, are void.

PART 534—[RESERVED]

PART 535—POST-APPROVAL PROCEDURES

Sec.

535.1 Modifications.

535.2 Assignments.
535.3 Post-approval noncompliance.

AUTHORITY: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

SOURCE: 58 FR 5830, Jan. 22, 1993, unless otherwise noted.

§535.1 Modifications.

(a) Subject to the Chairman's approval, a tribe may enter into a modification of a management contract for the operation of a class II or class III gaming activity.

(b) A tribe shall submit a modification to the Chairman upon its execution.

(c) A tribe shall include in any request for approval of a modification under this part:

(1) A modification containing original signatures of an authorized official of the tribe and the management contractor and terms that meet the applicable requirements of part 531 of this chapter;

(2) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the modification;

(3) Copies of documents evidencing the authority under paragraph (c)(2) of this section;

(4) If the modification involves a change in person(s) having a direct or indirect financial interest in the management contract or having management responsibility for the management contract, a list of such person(s) and either:

(i) The information required under §537.1(b)(1) of this chapter for class II gaming contracts or §537.1(b)(1)(i) of this chapter for class III gaming contracts; or

(ii) The dates on which the information was previously submitted;

(5) If applicable, a justification, consistent with the provisions of §531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years; and

(6) If applicable, a justification, consistent with the provisions of §531.1(i) of this chapter, for a management fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

(d) For modifications which do not require a background investigation under part 537 of this chapter, the Chairman shall have thirty (30) days from receipt to approve or disapprove a modification, or to notify the parties that an additional thirty (30) days is required to reach a decision.

(1) When a modification requires a background investigation under part 537 of this chapter, the Chairman shall approve or disapprove such modification as soon as practicable but in no event later than 180 days after the Chairman receives it;

(2) If the Chairman does not approve or disapprove, he shall respond in accordance with the service provisions of part 519 of this chapter noting that no action has been taken on the proposed modification. The request shall therefore be deemed disapproved and the parties shall have thirty (30) days to appeal the decision under part 539 of this chapter.

(e) (1) The Chairman may approve a modification to a management contract if the modification meets the submission requirements of paragraph (c) of this section.

(2) The Chairman shall disapprove a modification of a management contract for class II gaming if he or she determines that the conditions contained in §533.6(b) of this chapter apply.

(3) The Chairman may disapprove a modification of a management contract for class III gaming if he or she determines that the conditions contained in §533.6(c) of this chapter apply.

(f) Modifications that have not been approved by the Chairman in accordance with the requirements of this part are void.

§535.2 Assignments.

Subject to the approval of the Chairman, a management contractor may assign its rights under a management contract to the extent permitted by the contract. A tribe or a management contractor shall submit such assignment to the Chairman upon execution. The Chairman shall approve or disapprove an assignment applying the standards of, and within the time provided by §§535.1(d) and 535.1(e) of this part.

§ 535.3 Post-approval noncompliance.

If the Chairman learns of any action or condition that violates the standards contained in parts 531, 533, 535, and 537 of this chapter, the Chairman may require modifications of, or may void, a management contract approved by the Chairman under such sections, after providing the parties an opportunity for a hearing before the Chairman and a subsequent appeal to the Commission as set forth in part 577 of this chapter. The Chairman will initiate modification proceedings by serving the parties, specifying the grounds for modification. The parties will have thirty (30) days to request a hearing or respond with objections. Within thirty (30) days of receiving a request for a hearing, the Chairman will hold a hearing and receive oral presentations and written submissions. The Chairman will make his decision on the basis of the developed record and notify the parties of his/her decision and of their right to appeal.

PART 536—[RESERVED]

PART 537—BACKGROUND INVESTIGATIONS FOR PERSONS OR ENTITIES WITH A FINANCIAL INTEREST IN, OR HAVING MANAGEMENT RESPONSIBILITY FOR, A MANAGEMENT CONTRACT

Sec.
537.1 Applications for approval.
537.2 Submission of background information.
537.3 Fees for background investigations.
537.4 Determinations.

AUTHORITY: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

SOURCE: 58 FR 5831, Jan. 22, 1993, unless otherwise noted.

§ 537.1 Applications for approval.

(a) For each management contract for class II gaming, the Chairman shall conduct or cause to be conducted a background investigation of:

(1) Each person with management responsibility for a management contract;

(2) Each person who is a director of a corporation that is a party to a management contract;

(3) The ten (10) persons who have the greatest direct or indirect financial interest in a management contract;

(4) Any entity with a financial interest in a management contract (in the case of institutional investors, the Chairman may exercise discretion and reduce the scope of the information to be furnished and the background investigation to be conducted); and

(5) Any other person with a direct or indirect financial interest in a management contract otherwise designated by the Commission.

(b) For each natural person identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

(1) *Required information.* (i) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, and gender;

(ii) A current photograph, driver's license number, and a list of all languages spoken or written;

(iii) Business and employment positions held, and business and residence addresses currently and for the previous ten (10) years; the city, state and country of residence from age eighteen (18) to the present;

(iv) The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the person at each different residence location for the past five (5) years;

(v) Current business and residence telephone numbers;

(vi) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(vii) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(viii) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(ix) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the

name and address of the court involved, the charge, and the dates of the charge and of the disposition;

(x) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and the disposition;

(xi) A complete financial statement showing all sources of income for the previous three (3) years, and assets, liabilities, and net worth as of the date of the submission; and

(xii) For each criminal charge (excluding minor traffic charges) regardless of whether or not it resulted in a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraphs (b)(1)(ix) or (b)(1)(x) of this section, the name and address of the court involved, the criminal charge, and the dates of the charge and the disposition.

(2) *Fingerprints.* The management contractor shall arrange with an appropriate federal, state, or tribal law enforcement authority to supply the Commission with a completed form FD–258, Applicant Fingerprint Card, (provided by the Commission), for each person for whom background information is provided under this section.

(3) *Responses to questions.* Each person with a direct or indirect financial interest in a management contract or management responsibility for a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) *Privacy notice.* In compliance with the Privacy Act of 1974, each person required to submit information under this section shall sign and submit the following statement:

Solicitation of the information in this section is authorized by 25 U.S.C. 2701 *et seq.* The purpose of the requested information is to determine the suitability of individuals with a financial interest in, or having management responsibility for, a management contract. The information will be used by the National Indian Gaming Commission members and staff and Indian tribal officials who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, or foreign law enforcement and regulatory agencies in connection with a background investigation or when relevant to civil, criminal or regulatory investigations or prosecutions or investigations of activities while associated with a gaming operation. Failure to consent to the disclosures indicated in this statement will mean that the Chairman of the National Indian Gaming Commission will be unable to approve the contract in which the person has a financial interest or management responsibility.

The disclosure of a person's Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing the information provided.

(5) *Notice regarding false statements.* Each person required to submit information under this section shall sign and submit the following statement:

A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which I have a financial interest or management responsibility, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, I may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(c) For each entity identified in paragraph (a)(4) of this section, the management contractor shall provide to the Commission the following information:

(1) *List of individuals.* (i) Each of the ten (10) largest beneficiaries and the trustees when the entity is a trust;

(ii) Each of the ten (10) largest partners when the entity is a partnership; and

(iii) Each person who is a director or who is one of the ten (10) largest holders of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the entity is a corporation.

(2) *Required information.* (i) The information required in paragraph (b)(1)(i) of this section for each individual identified in paragraph (c)(1) of this section;

(ii) Copies of documents establishing the existence of the entity, such as the partnership agreement, the trust agreement, or the articles of incorporation;

(iii) Copies of documents designating the person who is charged with acting on behalf of the entity;

(iv) Copies of bylaws or other documents that provide the day-to-day operating rules for the organization;

(v) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(vi) A description of any existing and previous business relationships with the gaming industry generally, including ownership interest in those businesses;

(vii) The name and address of any licensing or regulatory agency with which the entity has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(viii) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and disposition;

(ix) For each misdemeanor conviction or ongoing misdemeanor prosecution within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and disposition;

(x) Complete financial statements for the previous three (3) fiscal years; and

(xi) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (c)(1)(viii) or (c)(1)(ix) of this section, the criminal charge, the name and address of the court involved and the dates of the charge and disposition.

(3) *Responses to questions.* Each entity with a direct or indirect financial interest in a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) *Notice regarding false statements.* Each entity required to submit information under this section shall sign and submit the following statement:

A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which we have a financial interest, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, we may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

[58 FR 5831, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 537.2 Submission of background information.

A management contractor shall submit the background information required in § 537.1 of this part:

(a) In sufficient time to permit the Commission to complete its background investigation by the time the individual is to assume management responsibility for, or the management contractor is to begin managing, the gaming operation; and

(b) Within ten (10) days of any proposed change in financial interest.

§ 537.3 Fees for background investigations.

(a) A management contractor shall pay to the Commission or the contractor(s) designated by the Commission the cost of all background investigations conducted under this part.

(b) The management contractor shall post a bond, letter of credit, or deposit with the Commission to cover the cost of the background investigations as follows:

(1) Management contractor (party to the contract)—$10,000

(2) Each individual and entity with a financial interest in the contract—$5,000

(c) The management contractor shall be billed for the costs of the investigation as it proceeds; the investigation shall be suspended if the unpaid costs exceed the amount of the bond, letter of credit, or deposit available.

(1) An investigation will be terminated if any bills remain unpaid for more than thirty (30) days.

(2) A terminated investigation will preclude the Chairman from making the necessary determinations and result in a disapproval of a management contract.

(d) The bond, letter of credit or deposit will be returned to the management contractor when all bills have been paid and the investigations have been completed or terminated.

§537.4 Determinations.

The Chairman shall determine whether the results of a background investigation preclude the Chairman from approving a management contract because of the individual disqualifying factors contained in §533.6(b)(1) of this chapter. The Chairman shall promptly notify the tribe and management contractor if any findings preclude the Chairman from approving a management contract or a change in financial interest.

PART 538—[RESERVED]

PART 539—APPEALS

Sec.
539.1 Scope of this part.
539.2 Appeals.

AUTHORITY: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

SOURCE: 58 FR 5832, Jan. 22, 1993, unless otherwise noted.

§539.1 Scope of this part.

This part applies to appeals from the Chairman's decision to approve or disapprove a management contract under this subchapter, except that appeals from the Chairman's decision to require modification of or to void a management contract subsequent to his or her initial approval are addressed in part 577 of this chapter.

[58 FR 16494, Mar. 29, 1993]

§539.2 Appeals.

A party may appeal the Chairman's disapproval of a management contract or modification under parts 533 or 535 of this chapter to the Commission. Such an appeal shall be filed with the Commission within thirty (30) days after the Chairman serves his or her determination pursuant to part 519 of this chapter. Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal. An appeal under this section shall specify the reasons why the person believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Within thirty (30) days after receipt of the appeal, the Commission shall render a decision unless the appellant elects to provide the Commission additional time, not to exceed an additional thirty (30) days, to render a decision. In the absence of a decision within the time provided, the Chairman's decision shall constitute the final decision of the Commission.

SUBCHAPTER D—[RESERVED]

PARTS 540–549—[RESERVED]

SUBCHAPTER E—GAMING LICENSES AND BACKGROUND INVESTIGATIONS FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

PARTS 550–555—[RESERVED]

PART 556—BACKGROUND INVESTIGATIONS FOR PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES

Sec.

556.1 Scope of this part.
556.2 Privacy notice.
556.3 Notice regarding false statements.
556.4 Background investigations.
556.5 Report to Commission.

AUTHORITY: 25 U.S.C. 2706, 2710, 2712.

SOURCE: 58 FR 5813, Jan. 22, 1993, unless otherwise noted.

§ 556.1 Scope of this part.

Unless a tribal-state compact allocates sole jurisdiction to an entity other than a tribe with respect to background investigations, the requirements of this part apply to all class II and class III gaming.

[58 FR 5810, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 556.2 Privacy notice.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 *et seq.* The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new application form that contains a Privacy Act notice; or

(2) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

§ 556.3 Notice regarding false statements.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001)

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new application form that contains a notice regarding false statements; or

(2) Sign a statement that contains the notice regarding false statements.

§556.4 Background investigations.

A tribe shall perform a background investigation for each primary management official and for each key employee of a gaming operation.

(a) A tribe shall request from each primary management official and from each key employee all of the following information:

(1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

(2) Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

(3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (a)(2) of this section;

(4) Current business and residence telephone numbers;

(5) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(8) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;

(9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within 10 years of the date of the application, the name and address of the court involved and the date and disposition;

(10) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (a)(8) or (a)(9) of this section, the criminal charge, the name and address of the court involved and the date and disposition;

(11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(12) A photograph;

(13) Any other information a tribe deems relevant; and

(14) Fingerprints consistent with procedures adopted by a tribe according to §522.2(h) of this chapter.

(b) A tribe shall conduct an investigation sufficient to make a determination under §558.2 of this chapter. In conducting a background investigation, a tribe or its agents shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(c) If the Commission has received an investigative report concerning an individual who another tribe wishes to employ as a key employee or primary management official and if the second tribe has access to the investigative materials held by the first tribe, the second tribe may update the investigation and update the investigative report under §556.5(b) of this part.

§556.5 Report to Commission.

(a) When a tribe employs a primary management official or a key employee, the tribe shall forward to the Commission a completed application containing the information listed under §556.4(a)(1)–(13) of this part.

(b) Before issuing a license to a primary management official or to a key employee, a tribe shall forward to the Commission an investigative report on each background investigation. An investigative report shall include all of the following:

(1) Steps taken in conducting a background investigation;

(2) Results obtained;

(3) Conclusions reached; and

(4) The bases for those conclusions.

(c) When a tribe forwards its report to the Commission, it shall include a copy of the eligibility determination made under § 558.2 of this chapter.

(d) If a tribe does not license an applicant—

(1) The tribe shall notify the Commission; and

(2) May forward copies of its eligibility determination under § 558.2 and investigative report (if any) under § 556.5(b) to the Commission for inclusion in the Indian Gaming Individuals Record System.

PART 557—[RESERVED]

PART 558—GAMING LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

Sec.

558.1 Scope of this part.
558.2 Eligibility determination for employment in a gaming operation.
558.3 Procedures for forwarding applications and reports for key employees and primary management officials to the Commission.
558.4 Granting a gaming license.
558.5 License suspension.

AUTHORITY: 25 U.S.C. 2706, 2710, 2712.

SOURCE: 58 FR 5814, Jan. 22, 1993, unless otherwise noted.

§ 558.1 Scope of this part.

Unless a tribal-state compact allocates responsibility to an entity other than a tribe:

(a) The licensing authority for class II or class III gaming is a tribal authority.

(b) A tribe shall develop licensing procedures for all employees of a gaming operation. The procedures and standards of part 556 of this chapter and the procedures and standards of this part apply only to primary management officials and key employees.

(c) For primary management officials or key employees, a tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman or his or her designee for no less than three (3) years from the date of termination of employment.

(d) A right to a hearing under § 558.5 of this part shall vest only upon receipt of a license granted under an ordinance approved by the Chairman.

[58 FR 5814, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 558.2 Eligibility determination for employment in a gaming operation.

An authorized tribal official shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or a primary management official for employment in a gaming operation. If the authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a management contractor or a tribal gaming operation shall not employ that person in a key employee or primary management official position.

[58 FR 5814, Jan. 22, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 558.3 Procedures for forwarding applications and reports for key employees and primary management officials to the Commission.

(a) When a key employee or a primary management official begins work at a gaming operation, a tribe shall:

(1) Forward to the Commission a completed application for employment that contains the notices and information listed in §§ 556.2, 556.3 and 556.4 of this chapter; and

(2) Conduct a background investigation under part 556 of this chapter to determine the eligibility of the key employee or primary management official for continued employment in a gaming operation.

(b) Upon completion of a background investigation and a determination of eligibility for employment in a gaming operation under paragraph (a)(2) of this section, a tribe shall forward a report under § 556.5(b) of this chapter to the Commission within 60 days after an employee begins work or within 60 days of the Chairman's approval of an ordinance under part 523. A gaming operation shall not employ a key employee

or primary management official who does not have a license after 90 days.

(c) During a 30-day period beginning when the Commission receives a report submitted under paragraph (b) of this section, the Chairman may request additional information from a tribe concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period until the Chairman receives the additional information.

§558.4 Granting a gaming license.

(a) If, within the 30-day period described in §558.3(c) of this part, the Commission notifies a tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the tribe has provided an application and investigative report to the Commission pursuant to §558.3 (a) and (b) of this part, the tribe may go forward and issue a license to such applicant.

(b) If, within the 30-day period described in §558.3(c) of this part, the Commission provides the tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the tribe has provided an application and investigative report to the Commission pursuant to §558.3 (a) and (b) of this part, the tribe shall reconsider the application, taking into account the objections itemized by the Commission. The tribe shall make the final decision whether to issue a license to such applicant.

§558.5 License suspension.

(a) If, after the issuance of a gaming license, the Commission receives reliable information indicating that a key employee or a primary management official is not eligible for employment under §558.2 of this part, the Commission shall notify the tribe that issued a gaming license.

(b) Upon receipt of such notification under paragraph (a) of this section, a tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

(c) A tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

(d) After a revocation hearing, a tribe shall decide to revoke or to reinstate a gaming license. A tribe shall notify the Commission of its decision.

PART 559—[RESERVED]

SUBCHAPTER F—[RESERVED]

PARTS 560–569—[RESERVED]

SUBCHAPTER G—COMPLIANCE AND ENFORCEMENT PROVISIONS

PART 570—[RESERVED]

PART 571—MONITORING AND INVESTIGATIONS

Subpart A—General

Sec.
571.1 Scope.
571.2 Definitions.
571.3 Confidentiality.

Subpart B—Inspection of Books and Records

571.5 Entry of premises.
571.6 Access to papers, books, and records.
571.7 Maintenance and preservation of papers and records.

Subpart C—Subpoenas and Depositions

571.8 Subpoena of witnesses.
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571.10 Geographical location.
571.11 Depositions.

Subpart D—Audits

571.12 Audit standards.
571.13 Copies of audit reports.
571.14 Relationship of audited financial statements to fee assessment reports.

AUTHORITY: 25 U.S.C. 2706(b), 2710(b)(2)(C), 2715, 2716.

SOURCE: 58 FR 5842, Jan. 22, 1993, unless otherwise noted.

Subpart A—General

§ 571.1 Scope.

This part sets forth general procedures governing Commission monitoring and investigations of Indian gaming operations.

§ 571.2 Definitions.

As used in this subchapter, the following terms have the specified meanings:

Commission's authorized representative means any persons who is authorized to act on behalf of the Commission for the purpose of implementing the Act and this chapter.

Day means calendar day unless otherwise specified.

Hearing means that part of a proceeding that involves the submission of evidence to the presiding official, either by oral presentation or written submission.

Party means the Chairman, the respondent(s), and any other person named or admitted as a party to a proceeding.

Person means an individual, Indian tribe, corporation, partnership, or other organization or entity.

Presiding official means a person designated by the Commission who is qualified to conduct an administrative hearing and authorized to administer oaths, and has had no previous role in the prosecution of a matter over which he or she will preside.

Respondent means a person against whom the Commission is seeking civil penalties under section 2713 of the Act.

Violation means a violation of applicable federal or tribal statutes, regulations, ordinances, or resolutions.

[58 FR 5842, Jan. 22, 1993; 58 FR 8449, Feb. 12, 1993, as amended at 58 FR 16494, Mar. 29, 1993]

§ 571.3 Confidentiality.

Unless confidentiality is waived, the Commission shall treat as confidential any and all information received under the Act that falls within the exemptions of 5 U.S.C. 552(b) (4) and (7); *except* that when such information indicates a violation of Federal, State, or tribal statutes, regulations, ordinances, or resolutions, the Commission shall provide such information to appropriate law enforcement officials. The confidentiality of documents submitted in

a multiple-party proceeding under part 577 of this chapter is addressed in §577.8 of this chapter.

Subpart B—Inspection of Books and Records

§571.5 Entry of premises.

(a) The Commission's authorized representative may enter the premises of an Indian gaming operation to inspect, examine, photocopy, and audit all papers, books, and records (including computer records) concerning:

(1) Gross revenues of class II gaming conducted on Indian lands; and

(2) Any other matters necessary to carry out the duties of the Commission under the Act and this chapter.

(b) The Commission's authorized representative shall present official identification upon entering a gaming operation for the purpose of enforcing the Act.

§571.6 Access to papers, books, and records.

(a) Once the Commission's authorized representative presents proper identification, a gaming operation shall provide the authorized representative with access to all papers, books, and records (including computer records) concerning class II gaming or any other matters for which the Commission requires such access to carry out its duties under the Act.

(b) If such papers, books, and records are not available at the location of the gaming operation, the gaming operation shall make them available at a time and place convenient to the Commission's authorized representative.

(c) Upon the request of the Commission's authorized representative, the gaming operation shall photocopy, or allow the Commission's authorized representative to photocopy, any papers, books, and records that are requested by the Commission's authorized representative.

§571.7 Maintenance and preservation of papers and records.

(a) A gaming operation shall keep permanent books of account or records, including inventory records of gaming supplies, sufficient to establish the amount of gross and net income, deductions and expenses, receipts and disbursements, and other information required in any financial statement, report, or other accounting prepared pursuant to the Act or this chapter.

(b) The Commission may require a gaming operation to submit statements, reports, or accountings, or keep specific records, that will enable the Commission to determine whether or not such operation:

(1) Is liable for fees payable to the Commission and in what amount; and

(2) Has properly and completely accounted for all transactions and other matters monitored by the Commission.

(c) Books or records required by this section shall be kept at all times available for inspection by the Commission's authorized representatives. They shall be retained for no less than five (5) years.

(d) A gaming operation shall maintain copies of all enforcement actions that a tribe or a state has taken against the operation, noting the final disposition of each case.

Subpart C—Subpoenas and Depositions

§571.8 Subpoena of witnesses.

By majority vote the Commission may authorize the Chairman to require by subpoena the attendance and testimony of witnesses relating to any matter under consideration or investigation by the Commission. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

§571.9 Subpoena of documents and other items.

By majority vote the Commission may authorize the Chairman to require by subpoena the production of certain documents and other items that are material and relevant to facts in issue in any matter under consideration or investigation by the Commission.

§571.10 Geographical location.

The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing.

§ 571.11 Depositions.

(a) Any party wishing to depose a witness shall file a request with the Commission or, if a presiding official has been designated under part 577 of this chapter, to the presiding official. Such a request shall not be granted except for good cause shown. A Commissioner or a presiding official may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation, except that Commission personnel may not be questioned by deposition for the purposes of discovery, but may be questioned by written interrogatories as authorized by the Commission or a presiding official. Commission records are not subject to discovery under this chapter. The inspection of Commission records is governed by § 571.3 of this part and the Freedom of Information Act, 5 U.S.C. 552. Depositions under this section may be taken before any person designated by the Commission or a presiding official, and who has the power to administer oaths.

(b) A party or a Commissioner (or a person designated by a Commissioner under paragraph (a) of this section) proposing to take a deposition under this section shall give reasonable notice to the Commission and the parties, if any, of the taking of a deposition. Notice shall include the name of the witness and the time and place of the deposition.

(c) Every person deposed under this part shall be notified of his or her right to be represented by counsel during the deposition, and shall be required to swear or affirm to testify to the whole truth. Testimony shall be reduced to writing and subscribed by the deponent. Depositions shall be filed promptly with the Commission or, if a presiding official has been designated, with the presiding official.

(d) Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall be severally entitled to the same fees as are paid for like services in the courts of the United States.

Subpart D—Audits

§ 571.12 Audit standards.

A tribe shall engage an independent certified public accountant to provide an annual audit of the financial statements of each gaming operation on Indian lands. Such financial statements shall be prepared in accordance with generally accepted accounting principles and the audit(s) shall be conducted in accordance with generally accepted auditing standards. Audit(s) of the gaming operation required under this section may be conducted in conjunction with any other independent audit of the tribe, provided that the requirements of this chapter are met.

§ 571.13 Copies of audit reports.

A tribe shall submit to the Commission a copy of the report(s) and management letter(s) setting forth the results of each annual audit within 120 days after the end of each fiscal year of the gaming operation.

§ 571.14 Relationship of audited financial statements to fee assessment reports.

A tribe shall reconcile its quarterly fee assessment reports, submitted under 25 CFR part 514, with its audited financial statements and make available such reconciliation upon request by the Commission's authorized representative.

PART 572—[RESERVED]

PART 573—ENFORCEMENT

Sec.

573.1 Scope.
573.3 Notice of violation.
573.6 Order of temporary closure.

AUTHORITY: 25 U.S.C. 2705(a)(1), 2706, 2713, 2715.

SOURCE: 58 FR 5844, Jan. 22, 1993, unless otherwise noted.

§ 573.1 Scope.

This part sets forth general rules governing the Commission's enforcement of the Act, this chapter, and tribal ordinances and resolutions approved by the Chairman under part 522 or 523

of this chapter. Civil fines in connection with notice of violation issued under this part are addressed in part 575 of this chapter.

§573.3 Notice of violation.

(a) The Chairman may issue a notice of violation to any person for violations of any provision of the Act or this chapter, or of any tribal ordinance or resolution approved by the Chairman under part 522 or 523 of this chapter.

(b) A notice of violation shall contain:

(1) A citation to the federal or tribal requirement that has been or is being violated;

(2) A description of the circumstances surrounding the violation, set forth in common and concise language;

(3) Measures required to correct the violation;

(4) A reasonable time for correction, if the respondent cannot take measures to correct the violation immediately; and

(5) Notice of rights of appeal.

§573.6 Order of temporary closure.

(a) *When an order of temporary closure may issue.* Simultaneously with or subsequently to the issuance of a notice of violation under §573.3 of this part, the Chairman may issue an order of temporary closure of all or part of an Indian gaming operation if one or more of the following substantial violations are present:

(1) The respondent fails to correct violations within:

(i) The time permitted in a notice of violation; or

(ii) A reasonable time after a tribe provides notice of a violation.

(2) A gaming operation fails to pay the annual fee required by 25 CFR part 514.

(3) A gaming operation operates for business without a tribal ordinance or resolution that the Chairman has approved under part 522 or 523 of this chapter.

(4) A gaming operation operates for business without a license from a tribe, in violation of part 558 of this chapter.

(5) A gaming operation operates for business without either background investigations having been completed for, or tribal licenses granted to, all key employees and primary management officials, as provided in §558.3(b) of this chapter.

(6) There is clear and convincing evidence that a gaming operation defrauds a tribe or a customer.

(7) A management contractor operates for business without a contract that the Chairman has approved under part 533 of this chapter.

(8) Any person knowingly submits false or misleading information to the Commission or a tribe in response to any provision of the Act, this chapter, or a tribal ordinance or resolution that the Chairman has approved under part 522 or 523 of this chapter.

(9) A gaming operation refuses to allow an authorized representative of the Commission or an authorized tribal official to enter or inspect a gaming operation, in violation of §571.5 or §571.6 of this chapter, or of a tribal ordinance or resolution approved by the Chairman under part 522 or 523 of this chapter.

(10) A tribe fails to suspend a license upon notification by the Commission that a primary management official or key employee does not meet the standards for employment contained in §558.2 of this chapter, in violation of §558.5 of this chapter.

(11) A gaming operation operates class III games in the absence of a tribal-state compact that is in effect, in violation of 25 U.S.C. 2710(d).

(12) A gaming operation's facility is constructed, maintained, or operated in a manner that threatens the environment or the public health and safety, in violation of a tribal ordinance or resolution approved by the Chairman under part 522 or 523 of this chapter.

(b) *Order effective upon service.* The operator of an Indian gaming operation shall close the operation upon service of an order of temporary closure, unless the order provides otherwise.

(c) *Informal expedited review.* Within seven (7) days after service of an order of temporary closure, the respondent may request, orally or in writing, informal expedited review by the Chairman.

(1) The Chairman shall complete the expedited review provided for by this

paragraph within two (2) days after his or her receipt of a timely request.

(2) The Chairman shall, within two (2) days after the expedited review provided for by this paragraph:

(i) Decide whether to continue an order of temporary closure; and

(ii) Provide the respondent with an explanation of the basis for the decision.

(3) Whether or not a respondent seeks informal expedited review under this paragraph, within thirty (30) days after the Chairman serves an order of temporary closure the respondent may appeal the order to the Commission under part 577 of this chapter. Otherwise, the order shall remain in effect unless rescinded by the Chairman for good cause.

PART 574—[RESERVED]

PART 575—CIVIL FINES

Sec.

575.1 Scope.
575.3 How assessments are made.
575.4 When civil fine will be assessed.
575.5 Procedures for assessment of civil fines.
575.6 Settlement, reduction, or waiver of civil fine.
575.9 Final assessment.

AUTHORITY: 25 U.S.C. 2705(a), 2706, 2713, 2715.

SOURCE: 58 FR 5844, Jan. 22, 1993, unless otherwise noted.

§ 575.1 Scope.

This part addresses the assessment of civil fines under section 2713(a) of the Act with respect to notices of violation issued under § 573.3 of this chapter.

§ 575.3 How assessments are made.

The Chairman shall review each notice of violation and order of temporary closure in accordance with § 575.4 of this part to determine whether a civil fine will be assessed, the amount of the fine, and, in the case of continuing violations, whether each daily illegal act or omission will be deemed a separate violation for purposes of the total civil fine assessed.

§ 575.4 When civil fine will be assessed.

The Chairman may assess a civil fine, not to exceed $25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation issued under § 573.3 of this chapter after considering the following factors:

(a) *Economic benefit of noncompliance.* The Chairman shall consider the extent to which the respondent obtained an economic benefit from the noncompliance that gave rise to a notice of violation, as well as the likelihood of escaping detection.

(1) The Chairman may consider the documented benefits derived from the noncompliance, or may rely on reasonable assumptions regarding such benefits.

(2) If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation.

(b) *Seriousness of the violation.* The Chairman may adjust the amount of a civil fine to reflect the seriousness of the violation. In doing so, the Chairman shall consider the extent to which the violation threatens the integrity of Indian gaming.

(c) *History of violations.* The Chairman may adjust a civil fine by an amount that reflects the respondent's history of violations over the preceding five (5) years.

(1) A violation cited by the Chairman shall not be considered unless the associated notice of violation is the subject of a final order of the Commission and has not been vacated; and

(2) Each violation shall be considered whether or not it led to a civil fine.

(d) *Negligence or willfulness.* The Chairman may adjust the amount of a civil fine based on the degree of fault of the respondent in causing or failing to correct the violation, either through act or omission.

(e) *Good faith.* The Chairman may reduce the amount of a civil fine based on the degree of good faith of the respondent in attempting to achieve rapid compliance after notification of the violation.

§575.5 Procedures for assessment of civil fines.

(a) Within 15 days after service of a notice of violation, or such longer period as the Chairman may grant for good cause, the respondent may submit written information about the violation to the Chairman. The Chairman shall consider any information so submitted in determining the facts surrounding the violation and the amount of the civil fine.

(b) The Chairman shall serve a copy of the proposed assessment on the respondent within thirty (30) days after the notice of violation was issued, when practicable.

(c) The Chairman may review and reassess any civil fine if necessary to consider facts that were not reasonably available on the date of issuance of the proposed assessment.

§575.6 Settlement, reduction, or waiver of civil fine.

(a) *Reduction or waiver.* (1) Upon written request of a respondent received at any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chairman may reduce or waive a civil fine if he or she determines that, taking into account exceptional factors present in a particular case, the fine is demonstrably unjust.

(2) All petitions for reduction or waiver shall contain:

(i) A detailed description of the violation that is the subject of the fine;

(ii) A detailed recitation of the facts that support a finding that the fine is demonstrably unjust, accompanied by underlying documentation, if any; and

(iii) A declaration, signed and dated by the respondent and his or her counsel or representative, if any, as follows: Under penalty of perjury, I declare that, to the best of my knowledge and belief, the representations made in this petition are true and correct.

(3) The Chairman shall serve the respondent with written notice of his or her determination under paragraph (a) of this section, including a statement of the grounds for the Chairman's decision.

(b) *Settlement.* At any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chairman and the respondent may agree to settle an enforcement action, including the amount of the associated civil fine. In the event a settlement is reached, a settlement agreement shall be prepared and executed by the Chairman and the respondent. If a settlement agreement is executed, the respondent shall be deemed to have waived all rights to further review of the violation or civil fine in question, except as otherwise provided expressly in the settlement agreement. In the absence of a settlement of the issues under this paragraph, the respondent may contest the assessed civil fine before the Commission in accordance with part 577 of this chapter.

§575.9 Final assessment.

(a) If the respondent fails to request a hearing as provided in part 577 of this chapter, the proposed civil fine assessment shall become a final order of the Commission.

(b) Civil fines assessed under this part shall be paid by the person assessed and shall not be treated as an operating expense of the operation.

(c) The Commission shall transfer civil fines paid under this subchapter to the U.S. Treasury.

[58 FR 5844, Jan. 22, 1993, as amended at 58 FR 16495, Mar. 29, 1993]

PART 576—[RESERVED]

PART 577—APPEALS BEFORE THE COMMISSION

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AUTHORITY: 25 U.S.C. 2706, 2713, 2715.

SOURCE: 58 FR 5845, Jan. 22, 1993, unless otherwise noted.

§ 577.1 Scope.

(a) This part provides procedures for appeals to the Commission regarding:

(1) A violation alleged in a notice of violation;

(2) Civil fines assessed by the Chairman;

(3) Whether an order of temporary closure issued by the Chairman should be made permanent or be dissolved; and

(4) The Chairman's decision to void or modify a management contract under part 535 of this chapter subsequent to initial approval.

(b) Appeals from determinations of the Chairman under 25 U.S.C. 2710 and 2711 (regarding management contracts) and 2710 (regarding tribal gaming ordinances) are addressed in parts 539 and 524 of this chapter respectively.

§ 577.3 Request for hearing.

(a) A respondent may request a hearing to contest the matters listed in § 577.1(a)(1)–(4) by submitting a notice of appeal to the Commission within thirty (30) days after service of:

(1) A notice of violation;

(2) A proposed civil fine assessment or reassessment;

(3) An order of temporary closure; or

(4) An order voiding or modifying a management contract subsequent to initial approval.

(b) A notice of appeal shall reference the notice or order from which the appeal is taken.

(c) Within ten (10) days after filing a notice of appeal, the respondent shall file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefor and that includes, when available, supporting evidence in the form of affidavits. If the respondent wishes to present oral testimony or witnesses at the hearing, the respondent shall include a request to do so with the supplemental statement. The request to present oral testimony or witnesses shall specify the names of proposed witnesses and the general nature of their expected testimony, and whether a closed hearing is requested and why. The respondent may waive in writing his or her right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

§ 577.4 Hearing deadline.

(a) The Commission shall designate a presiding official who shall commence a hearing within 30 days after the Commission receives a timely notice of appeal from the respondent. At the request of the respondent, the presiding official may order the hearing to commence at a time more than 30 days after the respondent files a notice of appeal. The Commission shall transmit the administrative record of the case to the presiding official upon designation.

(b) If the subject of an appeal is whether an order of temporary closure should be made permanent or be dissolved, the hearing shall be concluded within 30 days after the Commission receives a timely notice of appeal, unless the respondent waives this requirement. Notwithstanding any other provision of this part, the presiding official shall conduct such a hearing in a manner that will enable him or her to conclude the hearing within the period required by this paragraph, while ensuring due process to all parties.

§ 577.6 Service.

(a) A respondent who initiates an appeal under this part shall serve copies of the initiating documents on the Commission at the address indicated in the notice or order that is the subject of the appeal. All filings shall be made with the Commission until a presiding official is designated and the parties are so notified, after which all filings shall be made with the presiding official. Any party or other person who subsequently files any other document with the Commission or the presiding officer shall simultaneously serve copies of that document on any other parties to the proceeding, except to that extent § 577.8 of this part may govern the disclosure of confidential information contained in a filing.

(b) Copies of documents by which a proceeding is initiated shall be served on all known parties personally, by facsimile, or by registered or certified

mail, return receipt requested. All subsequent documents shall be served personally, by facsimile, or by first class mail.

(c) Service of copies of all documents is complete at the time of personal service or, if service is made by mail or facsimile, upon transmittal.

(d) Whenever a representative (including an attorney) has entered an appearance for a party in a proceeding initiated under this part, service thereafter shall be made upon the representative.

(e) In computing any period of time prescribed for filing and serving a document, the first day of the period so computed shall not be included. The last day shall be included unless it is a Saturday, Sunday, or federal legal holiday, in which case the period shall run until the end of the next business day.

(f)(1) The presiding official may extend the time for filing or serving any document except a notice of appeal.

(2) A request for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the presiding official may grant an extension of time on his or her own initiative.

§577.7 Conduct of hearing.

(a) Once designated by the Commission, the presiding official shall set the case for hearing. The respondent may appear at the hearing personally, through counsel, or personally with counsel. The respondent shall have the right to introduce relevant written materials and to present an oral argument. At the discretion of the presiding official, a hearing under this section may include an opportunity to submit oral and documentary evidence and cross-examine witnesses.

(b) When holding a hearing under this part, the presiding official shall:

(1) Administer oaths and affirmations;

(2) Issue subpoenas authorized by the Commission;

(3) Rule on offers of proof and receive relevant evidence;

(4) Authorize exchanges of information (including depositions and interrogatories in accordance with 25 CFR part 571, subpart C) among the parties when to do so would expedite the proceeding;

(5) Regulate the course of the hearing;

(6) When appropriate, hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) At any conference held pursuant to paragraph (b)(6) of this section, require the attendance of at least one representative of each party who has authority to negotiate the resolution of issues in controversy;

(8) Dispose of procedural requests or similar matters;

(9) Recommend decisions in accordance with §577.14 of this part; and

(10) Take other actions authorized by the Commission consistent with this part.

(c) The presiding official may order the record to be kept open for a reasonable period following the hearing (normally five days), during which time the parties may make additional submissions to the record. Thereafter, the record shall be closed and the hearing shall be deemed concluded. Within 30 days after the record closes, the presiding official shall issue a recommended decision in accordance with §577.14 of this part.

§577.8 Request to limit disclosure of confidential information.

(a) If any person submitting a document in a proceeding that involves more than two parties claims that some or all of the information contained in that document is exempt from the mandatory public disclosure requirements under the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905 (disclosure of confidential information), or is otherwise exempt by law from public disclosure, the person shall:

(1) Indicate that the document in its entirety is exempt from disclosure or identify and segregate information within the document that is exempt from disclosure; and

(2) Request that the presiding official not disclose such information to the parties to the proceeding (other than the Chairman, whose actions regarding

the disclosure of confidential information are governed by § 571.3 of this chapter) except pursuant to paragraph (b) of this section, and shall serve the request upon the parties to the proceeding. The request to the presiding official shall include:

(i) A copy of the document, group of documents, or segregable portions of the documents marked ''Confidential Treatment Requested''; and

(ii) A statement explaining why the information is confidential.

(b) A party to a proceeding may request that the presiding official direct a person submitting information under paragraph (a) of this section to provide that information to the party. The presiding official shall so direct if the party requesting the information agrees under oath and in writing:

(1) Not to use or disclose the information except directly in connection with the hearing; and

(2) To return all copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

(c) If a person submitting documents in a proceeding under this part does not claim confidentiality under paragraph (a) of this section, the presiding official may assume that there is no objection to disclosure of the document in its entirety.

(d) If the presiding official determines that confidential treatment is not warranted with respect to all or any part of the information in question, the presiding official shall so inform all parties by telephone, if possible, and by facsimile or express mail letter directed to the parties' last known addresses. The person requesting confidential treatment then shall be given an opportunity to withdraw the document before it is considered by the presiding official, or to disclose the information voluntarily to all parties.

(e) If the presiding official determines that confidential treatment is warranted, the presiding official shall so inform all parties by facsimile or express mail directed to the parties' last known address.

(f) When a decision by a presiding official is based in whole or in part on evidence not included in the public record, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record.

§ 577.9 Consent order or settlement.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days before the date set for hearing under § 577.7 of this part, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding.

(b) *Content.* Any agreement containing consent findings and an order disposing of the whole or any part of a proceeding shall also provide:

(1) A waiver of any further procedural steps before the Commission;

(2) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(3) That the presiding official's certification of the findings and agreement shall constitute dismissal of the appeal and final agency action.

(c) *Submission.* Before the expiration of the time granted for negotiations, the parties or their authorized representatives may:

(1) Submit to the presiding official a proposed agreement containing consent findings and an order;

(2) Notify the presiding official that the parties have reached a full settlement and have agreed to dismissal of the action, subject to compliance with the terms of the settlement; or

(3) Inform the presiding official that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time granted, the presiding official shall certify such findings and agreement within thirty (30) days after his or her receipt of the submission. Such certification shall constitute dismissal of the appeal and final agency action.

§577.12 Intervention.

(a) Persons other than the respondent may be permitted to participate as parties if the presiding official finds that:

(1) The final decision could directly and adversely affect them or the class they represent;

(2) They may contribute materially to the disposition of the proceedings;

(3) Their interest is not adequately represented by existing parties; and

(4) Intervention would not unfairly prejudice existing parties or delay resolution of the proceeding.

(b) If a tribe has jurisdiction over lands on which there is a gaming operation that is the subject of a proceeding under this part, and the tribe is not already a named party, such tribe may intervene as a matter of right.

(c) A person not named as a party and who wishes to participate as a party under this section shall submit a petition to the presiding official within ten (10) days after the person knew or should have known about the proceeding. The petition shall be filed with the presiding official and served on each person who has been made a part at the time of filing. The petition shall state concisely:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner wishes to present witnesses.

(d) Objections to the petition may be filed by any party within ten (10) days after service of the petition.

(e) When petitions to participate as parties are made by individuals or groups with common interests, the presiding official may request all such petitioners to designate a single representative, or he or she may recognize one or more petitioners.

(f) The presiding official shall give each petitioner, as well as the parties, written notice of the presiding official's decision on the petition. For each petition granted, the presiding official shall provide a brief statement of the basis of the decision. If the petition is denied, the presiding official shall briefly state the grounds for denial and may then treat the petition as a request for participation as amicus curiae (that is, ''friend of the court'').

§577.13 Transcript of hearing.

Hearings under this part that involve oral presentations shall be recorded verbatim and transcripts thereof shall be provided to parties upon request. Fees for transcripts shall be at the actual cost of duplication.

§577.14 Recommended decision of presiding official.

(a) *Recommended decision.* Within thirty (30) days after the record closes, the presiding official shall render his or her recommended decision. The recommended decision of the presiding official shall be based upon the whole record and shall include findings of fact and conclusions of law upon each material issue of fact or law presented on the record.

(b) *Filing of objections.* Within ten (10) days after the date of service of the presiding official's recommended decision, the parties may file with the Commission objections to any aspect of the decision, and the reasons therefor.

§577.15 Review by Commission.

The Commission shall affirm or reverse, in whole or in part, the recommended decision of the presiding official by a majority vote within thirty (30) days after the date on which the presiding official issued the decision. The Commission shall provide a notice and order to all parties stating the reasons for its action. In the absence of a majority vote by the Commission within the time provided by this section, the recommended decision of the presiding official shall be deemed affirmed except that, if the subject of the appeal is an order of temporary closure issued under §573.6 of this chapter, the order of temporary closure shall be dissolved.

PARTS 578—579—[RESERVED]

SUBCHAPTER H—[RESERVED]

PARTS 580–589—[RESERVED]

SUBCHAPTER I—[RESERVED]

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SOURCE: 47 FR 2092, Jan. 14, 1982, unless otherwise noted.

Subpart A—General Policies and Instructions

§ 700.1 Purpose.

The purpose of this part is to implement provisions of the Act of December 22, 1974 (Pub. L. 93–531, 88 Stat. 1712 as amended by Pub. L. 96–305, 94 Stat. 929), hereinafter referred to as the Act, in accordance with the following objectives—

(a) To insure that persons displaced as a result of the Act are treated fairly, consistently, and equitably so that these persons will not suffer the disproportionate adverse, social, economic, cultural and other impacts of relocation.

(b) To set forth the regulations and procedures by which the Commission shall operate; and implement the provisions of the Act.

(c) To establish standards consistent with those established in the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894, 42 U.S.C. 4601 et. seq., Pub. L. 91–646), hereinafter referred to as the Uniform Act.

(d) To insure that owners of habitations and other improvements to be acquired pursuant to the Act are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation, relieve congestion in the courts and to promote public confidence in the Commission's relocation program.

(e) To facilitate development of a relocation plan according to the Act and carry out the directed relocation as promptly and fairly as possible, with a minimum of hardship and discomfort to the relocation, in accordance with the Act.

§700.3 Assurances with respect to acquisition and displacement.

The Commission will not approve any programs or projects which may result in the acquisition of habitations and/or improvements, or in the displacement of any person, until such time as written assurances are submitted to the Commission that such projects or programs are in accordance with the Act. It will—

(a) Assure that, within a reasonable period of time prior to displacement, adequate, decent, safe and sanitary replacement dwellings (defined at §700.55) will be available to all certified eligible heads of households.

(b) Carry out relocation services in a manner that will promote maximum quality in housing.

(c) Inform affected persons of their rights under the policies and procedures set forth under the regulations in this part.

§700.5 Supersedure of regulations.

These regulations supersede the regulations formerly appearing in this part. However, any acquisition of property or displacement of a person occurring prior to the effective date of these regulations shall continue to be governed by the regulations at 25 CFR part 700 in effect at the time of the acquisition or displacement.

§700.11 Manner of notice.

Each notice which the Commission is required to provide under these regulations shall be personally served, receipt documented, or sent by certified or registered first-class mail, return receipt requested. Each notice shall be written in plain understandable language. Recipients who notify the Commission that they are unable to read and understand the notice will be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§700.13 Waiver of regulations.

(a) Any time limit specified for the filing of a claim or an appeal under the regulations in this part may, on a case by case basis, be extended by the Commission.

(b) The Commission may waive any requirement of these regulations in this part if such requirement is not required by law and if the Commission finds such waiver or exception to be in the best interest of individual Indian applicants, the Commission, and the United States. Any request for a Commission waiver shall be submitted in writing to the Commission and shall be justified on a case by case basis.

§700.15 Waiver of rights by owner.

Nothing in these regulations shall prevent a fully informed applicant from voluntarily waiving any of his/her rights under the regulations in this part. A waiver of rights shall in no way constitute an exemption from the requirement to relocate pursuant to the Act.

DEFINITIONS

§700.31 Applicability of definitions.

Except where otherwise noted, the definitions appearing in this subpart A apply to the regulations in this part.

§700.33 Act (The Act).

(a) *The Act.* The Act is Pub. L. 93–531, (88 Stat. 1712, 25 U.S.C. 640d.) as amended by Pub. L. 96–305 (94 Stat. 929).

§ 700.35 Applicant.

A person who applies for relocation assistance benefits and agrees to relocate as required by the Act.

§ 700.37 Application for relocation assistance benefits and agreement to move.

The application for relocation assistance benefits and agreement to move is Commission Form #69–R0001, completion of which is used for establishing the date upon which a person shall be deemed to have a contract with the Commission to relocate pursuant to section 14(b) of the Act.

§ 700.39 Appraisal.

The appraisal is an estimate of the fair market value which is placed on the habitation and other improvements owned by a relocatee.

§ 700.41 Appraiser.

An appraiser is a person appointed or hired by the Commission to make an appraisal of the habitation and other improvements on the land owned by the relocatees. All compensation for the appraiser shall be paid by the Commission.

§ 700.43 Assistance payment.

An assistance payment is the additional payment made to the certified eligible head of household pursuant to section 14(b) of the Act. This term is synonymous with ''incentive bonus''.

§ 700.45 Business.

The term business means any lawful activity, except a nonprofit organization or a farm operation, that is—

(a) Conducted primarily for the purchase, sale, lease and or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(b) Conducted primarily for the sale of services to the public; or

(c) Solely for the purpose of Subpart D of this part, conducted primarily for outdoor advertising display purposes, when the display(s) must be moved as a result of the Act.

§ 700.47 Commission.

The Navajo and Hopi Indian Relocation Commission is that entity established pursuant to 25 U.S.C. 640d–11 (Section 12(a) of the Act).

§ 700.49 Certified eligible head of household.

A certified eligible head of household is a person who has received notice from the Commission that he/she has been certified as eligible to receive certain relocation assistance benefits.

§ 700.51 Custodial parent.

A custodial parent is a person who has the immediate personal care, charge, and control of a minor child who resides in his/her household, or a person who fills the parental role but who is not necessarily blood-related.

§ 700.53 Dwelling, replacement.

The term replacement dwelling means a dwelling selected by the head of a household as a replacement dwelling that meets the criteria of this section. A replacement dwelling is a dwelling that:

(a) Is decent, safe, and sanitary as described in § 700.55.

(b) May include existing dwellings for resale, new construction, modular homes, mobile homes, mutual self-help housing or other federally assisted housing programs.

(c) Is in an area not subjected to unreasonable adverse environmental conditions from either natural or man-made sources and in an area not generally less desirable than that of the acquired dwelling with respect to public utilities, public and commercial facilities, and schools.

(d) Is available at a purchase price within the ability-to-pay of the displaced person. A replacement dwelling shall be considered within the ability-to-pay of the displaced person if, after he receives a replacement housing payment and any available housing assistance payments, his new monthly housing cost (defined at § 700.81) for the replacement dwelling does not exceed twenty-five percent (25%) of the monthly gross income of all adult members of the household, including

supplemental income payments received from public agencies. If the person's monthly income pattern is irregular, the Commission shall base its determination of average gross monthly income on the period of time, actual and/or projected, that most fairly and equitable represents the person's ability-to-pay.

(e) Is actually available to the displaced person on the private market, other federally sponsored housing projects, tribal-sponsored housing projects and/or Commission-sponsored housing projects.

§ 700.55 Decent, safe, and sanitary dwelling.

(a) *General.* The term decent, safe, and sanitary dwelling means a dwelling which—

(1) Meets applicable federal, state and local housing and occupancy codes; including but not limited to the Uniform Building Code, National Electrical Code, ICBO Plumbing Code, the Uniform Mechanical Code, HUD Minimum Property Standards, and HUD Mobile Home Construction and Safety Standards (24 CFR part 4080).

(2) Is structurally sound, clean, weathertight and in good repair and has adequate living space and number of rooms.

(3) Has an adequate and safe electrical wiring system for lighting and other electrical services where economically feasible.

(4) Meets the requirements of the HUD lead-based paint regulations (24 CFR part 42) issued under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831 et seq.);

(5) In the case of a physically handicapped person, is free of any architectural barriers. To the extent that standards prescribed by the American National Standards Institute, Inc., in publication ANSI A117.1–1961 (R 1971), are pertinent, this provision will be considered met if it meets those standards;

(6) Has heating as required by climatic conditions;

(7) Has habitable sleeping area that is adequately ventilated and sufficient to accommodate the occupants;

(8) Has a separate well-lighted and ventilated bathroom, affording privacy to the user, that contains a sink and bathtub or shower stall, properly connected to hot and cold water, and a flush toilet, all in good working order and properly connected to a sewage drainage system; and

(9) In the case of new construction or modular housing, complies with the energy performance standards for new buildings set forth by the U.S. Department of Energy.

(10) The Commission may waive paragraph (a)(3) or (8) of this section on a case-by-case basis if it is determined that it is in the best interest of the individual relocatee to do so.

§ 700.57 Dependent.

A dependent is a person who either derives more than one-half of his/her support from another or is under the custody, control and care of another. In instances where there are conflicting claims for the dependent status of a person in more than one household, the household of the person having custody, control and care shall be determined to be the household wherein the person is a dependent.

§ 700.59 Displaced person.

Displaced person means a member of the Hopi Tribe residing within the area partitioned to the Navajo Tribe or a member of the Navajo Tribe residing within the area partitioned to the Hopi Tribe who must be relocated pursuant to the Act. This term is synonymous with the term ''relocatee''.

§ 700.61 Fair market value.

Fair market value shall mean the value placed on the habitation and improvements owned by each head of household as determined pursuant to §§ 700.117 through 700.121.

§ 700.65 Farm operation.

Farm operation means any activity conducted for the production of one or more agricultural products or commodities including livestock, crops and timber for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support as determined in § 700.171(b)(3).

§ 700.67 Habitation.

The term habitation means the dwelling(s) of each household required to relocate under the term of the Act.

§ 700.69 Head of household.

(a) *Household.* A household is:

(1) A group of two or more persons living together at a specific location who form a unit of permanent and domestic character.

(2) A single person who at the time his/her residence on land partitioned to the Tribe of which he/she is not a member actually maintained and supported him/herself or was legally married and is now legally divorced.

(b) *Head of household.* The head of household is that individual who speaks on behalf of the members of the household and who is designated by the household members to act as such.

(c) In order to qualify as a head of household, the individual must have been a head of household as of the time he/she moved from the land partitioned to a tribe of which they were not a member.

[49 FR 22278, May 29, 1984]

§ 700.71 Improvements.

Improvements are structures and attached fixtures to the land owned by a member of a household required to relocate under the terms of the Act, in addition to the habitation which improvements cannot readily be moved without substantial damage, or whose movement would require unreasonable cost.

§ 700.77 Livestock.

The term livestock shall mean all domesticated animals of every type owned by the displaced person.

§ 700.79 Marriage.

Marriage is a legally recorded marriage or a traditional commitment between a man or woman recognized by the law of the Hopi Tribe or the Navajo Tribe.

§ 700.81 Monthly housing cost.

(a) *General.* The term monthly housing cost for a replacement dwelling purchased by a certified eligible head of household is the average monthly cost for all mortgage payments, real property taxes, reasonable utility charges, and insurance.

(b) *Computation of monthly housing cost for replacement dwelling.* A person's monthly housing cost for a replacement dwelling shall be a projected amount that includes one-twelfth of the estimated reasonable annual cost for utility charges.

§ 700.83 Nonprofit organization.

The term nonprofit organization means a corporation, individual, or other public or private entity that is engaged in a lawful business, professional, or instructional activity on a nonprofit basis and that has established its nonprofit status under applicable Federal, State, or Tribal law.

§ 700.85 Owner.

The term owner means the person who holds any interest in habitations and improvements to be acquired by the Commission pursuant to section 15(a) of the Act, which the Commission determines warrants consideration of ownership.

§ 700.87 Person.

The term person means any individual, partnership, corporation, or association.

§ 700.89 Relocation contract.

The Relocation Contract is that contract signed by the head of household in which he/she agrees to purchase an existing house or to construct a new house, the owner of such existing house or the builder of the proposed new house agrees to sell or perform the construction, and the Commission agrees to make payments according to such agreement.

[47 FR 17988, Apr. 27, 1982]

§ 700.91 Relocation report.

The relocation report shall be the report prepared by the Commission and submitted to Congress pursuant to section 13(a) of the Act.

§ 700.93 Relocation plan.

The relocation plan shall be the plan prepared by the Commission and submitted to Congress pursuant to section 13(c) of the Act.

§ 700.95 Replacement housing funds.

Replacement housing funds means those funds authorized to be appropriated pursuant to section 25(a)(1) of the Act.

§ 700.97 Residence.

(a) Residence is established by proving that the head of household and/or his/her immediate family were legal residents as of December 22, 1974, of the lands partitioned to the Tribe of which they are not members.

[49 FR 22278, May 29, 1984]

§ 700.99 Salvage value.

Salvage value means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

§ 700.101 Single person.

A single person is a widow, widower, unmarried or divorced person.

§ 700.103 Uniform Act.

The term Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et seq.; Pub. L. 91–646).

§ 700.105 Utility charges.

Utility charges means the cost for heat, lighting, hot water, electricity, natural gas, butane, propane, wood, coal or other fuels water, sewer and trash removal.

Subpart B—Acquisition and Disposal of Habitations and/or Improvements

§ 700.111 Applicability of acquisition requirements.

General. The requirements of this subpart B apply to all Commission acquisition of habitations and/or improvements that occur on or after the effective date of these regulations.

§ 700.113 Basic acquisition policies.

(a) *Appraisal and invitation to owner.* Before the initiation of negotiations, the Commission shall have the habitations and/or improvements appraised to its satisfaction and will attempt to assure that the owner or his designated representative is contacted in advance of the appraisal(s) and given an opportunity to accompany each appraiser during the appraiser's inspection of the property.

(b) *Determination and offer of fair market value.* Before the initiation of negotiations, the Commission shall establish an amount which it believes is fair market value for improvements. This amount shall be based on a current appraisal at the time negotations commence for the Relocation Contract between the NHIRC and the relocatee. The appraisal will be adjusted according to the Boeckh Building Cost Modifier for time or any physical changes in the improvements. If any changes are necessary the appraisal will be corrected to reflect a current dollar value. The amount of the current appraisal will be offered as just compensation for the improvements acquired, except as provided in paragraph (d) of this section. A copy of the initial appraisal will be sent to the owner as soon as possible after the appraisal program is completed.

(c) *Basic negotiation procedures.* The Commission will attempt to meet with the owner or his/her representative to discuss its offer to purchase his/her property including the basis for the determination of fair market value and explain acquisition policies and procedures, including payment of incidental

expenses. The owner shall be given reasonable opportunity to present material which he/she believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Commission shall consider the owner's presentation.

(d) If the condition of the property indicates the need for a new appraisal or if a significant delay has occurred since the time of the latest appraisal of the property, the Commission shall have the appraisal updated or obtain a new appraisal. If a new appraisal is for a lesser value than the previous appraisal and said lesser value is due to damage done to the property during the time between the two appraisals, and such damage was not caused by the owner of the improvement, the owner shall be entitled to the higher appraisal value.

(e) [Reserved]

(f) *Objection to determination of fair market value.* If the owner objects to the Commission's determination of fair market value, the owner may request a hearing pursuant to the Commission's Hearing and Administrative Review procedures;

(g) *Payment before taking possession.* Before requiring an owner to surrender possession of his habitations and/or improvements, the Commission shall—

(1) Apply the agreed purchase price towards the acquisition price of the replacement dwelling or;

(2) Deposit with the court in an appropriate proceeding, such as divorce or probate, for the benefit of the owner, an amount not less than the Commission's determination of fair market value for the property or the court award of compensation for the property up to the maximum benefit allowed under the then existing replacement housing benefit.

§ 700.115 Preliminary acquisition notice.

As soon as feasible in the acquisition process, the Commission shall issue a preliminary acquisition notice to the owner. The notice shall—

(a) Inform the owner of the Commission's interest in acquiring his/her habitations and/or improvements.

(b) Explain that such preliminary acquisition notice is not a notice to vacate and that it does not establish eligibility for relocation payments or other relocation assistance under these regulations.

§ 700.117 Criteria for appraisals.

(a) *Appraisal standards.* The Commission's appraisals shall be based upon nationally recognized appraisal standards and techniques to the extent that such principles are consistent with the concepts of value that the Commission may establish.

(b) *Documentation.* Appraisal reports must contain sufficient documentation, including supporting valuation data and the appraiser's analyses of that data, to demonstrate the reasonableness of the appraiser's opinion(s) of value.

(c) *Conflict of interest.* No appraiser shall have any interest, direct or indirect, in the habitations and/or improvements which he appraisers for the Commission that would in any way conflict with his performance of the appraisal.

§ 700.119 Establishment of fair market value.

(a) *General.* The Commission shall establish the amount of fair market value to be offered to the owner for the habitations and/or improvements. Such amount shall not be less than—

(1) The appraiser's recommendations as to the fair market value of the habitations and/or improvements; or

(2) The fair market value estimate set forth in the agency's approved appraisal, if the property is valued at $2,000 or less.

(b) *Owner retention of improvements.* If the owner of a habitation and/or improvement is permitted to retain it for removal off-site, the amount determined to be just compensation for the interest in habitations and/or improvements to be acquired from him shall not be less than the amount determined by subtracting the salvage value of the improvements he retains for off-site removal from the amount determined to be fair market value for his entire interest in the habitation and improvement. Retention of improvements by the owner shall not change, alter or abrogate the requirement of

the Act that the owner must move from land partitioned to the tribe of which he/she is not a member.

§ 700.121 Statement of the basis for the determination of fair market value.

At the time of the initiation of negotiations to acquire the habitations and/or improvements, the Commission shall furnish the owner, along with the initial written purchase offer, a written statement of the basis for the determination of fair market value. To the extent permitted by the Commission, the statement shall include the following—

(a) A description and location identification of the habitations and/or improvements to be acquired.

(b) An inventory identifying the buildings, structures, fixtures, and other improvements, including appurtenant removable building equipment, which are considered to be part of the habitations and/or improvements for which the offer of fair market value is made.

(c) A recital of the amount of the offer and a declaration that such amount—

(1) Is the full amount believed by the Commission to be just compensation for the property and is not less than the fair market value of the property as determined on the basis of the appraisal(s);

(2) Does not reflect any relocation payments or other relocation assistance which the owner is entitled to receive.

(d) If only a portion of a habitation and/or improvement is to be acquired, an apportionment of the total estimated just compensation for the partial acquisition will be made. In the event that the Commission determines that partial acquisitions are necessary, all portions so acquired will be acquired simultaneously.

§ 700.123 Expenses incidental to transfer of ownership to the Commission.

Eligible costs. The Commission shall reimburse the owner for reasonable expenses he/she necessarily incurred incidental to the transfer of habitations and/or improvements to the Commission. The Commission is not required to pay costs solely required to perfect the owner's interest in the habitations and/or improvements.

§ 700.125 Disposal of property.

Property acquired by the Commission pursuant to the Act shall be disposed of in one of the following manners:

(a) If the Commission determines that the property acquired constitutes a substantial risk to public health and safety, the Commission may remove or destroy the property.

(b) The Commission may transfer the property acquired by gratuitous conveyance to the tribe exercising jurisdiction over the area. Notice of such transfer shall be in writing and shall be completed within sixty (60) days from the finalization of all property acquisition procedures, unless the tribe notifies the Commission in writing within that time that the property transfer is refused. In the event of a refusal by the tribe, the Commission shall remove the property.

§ 700.127 Payments for acquisition of improvements.

Payments for acquisition of improvements shall be made in the following situations:

(a) To individuals who have been denied benefits under these rules and who can prove ownership of habitations and improvements on land partitioned to the tribe of which they are not members. If the owner is deceased the payment shall be made to his or her estate. Payments under this subsection are further limited by 25 U.S.C. 640d–14(c), Pub. L. 93–531, sec. 15(c).

(b) To individuals who have been certified as eligible for relocation benefits but who at the time of certification, own a decent, safe and sanitary dwelling as determined by the Commission pursuant to § 700.187 and who own habitation and improvements on land partitioned to the tribe of which they are not members.

Ownership shall be determined on the basis of Commission appraisal records at the time of the initial eligibility determination.

(25 U.S.C. 640d, Pub. L. 93–531, 25 U.S.C. 640d–14, Pub. L. 96–305)

[49 FR 35379, Sept. 7, 1984]

Subpart C—General Relocation Requirements

§ 700.131 Purpose and applicability.

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance under the regulations in this part. The relocation requirements of the regulations in this part apply to the relocation of any displaced person.

§ 700.133 Notice of displacement.

After the Commission's Relocation Report and Plan is in effect pursuant to the Act, the Commission shall issue a preliminary relocation notice to each person identified by the Commission as potentially subject to relocation. This notice shall—

(a) Be published in a newspaper of general circulation in the area of the former Joint Use Area at least two times, and shall be sent to each Chapter House on the former Joint Use Area for posting.

(b) Inform the person that he/she will be required to relocate permanently in the future unless the person has applied for and is determined to be eligible for a Life Estate.

(c) Generally describe the relocation assistance program for which the person may become eligible, including the maximum allowable dollar amounts and basic conditions of eligibility for the payments.

§ 700.135 Relocation assistance advisory services.

(a) *General.* The Commission may carry out a relocation assistance advisory program which offers the services described in paragraph (b) of this section. If the Commission determines that a person occupying habitations and/or improvements adjacent to the habitations and/or improvements acquired pursuant to the Act is caused substantial social, economic cultural or other injury because of such acquisition, it may offer such services to such person.

(b) *Services to be provided.* The advisory program will include such measures, facilities, and services as may be necessary or appropriate in order to—

(1) Personally interview where possible each certified eligible head of household to determine his/her relocation needs and preferences, and explain to him/her the relocation payments and other assistance for which he/she may be eligible, the related eligibility requirements, and the procedures for obtaining such payments and assistance;

(2) Provide current and continuing information on the availability, purchase prices, and rental costs of replacement dwellings and commercial and farm properties and locations, as the case may be.

(3) Assure that replacement dwellings are available to all certified eligible heads of households.

(4) Assist any persons displaced from a business or farm operation to obtain and become established in a suitable replacement location;

(5) Supply persons to be displaced with appropriate information concerning Tribal, Federal, State or local housing programs, disaster loans and other programs administered by the Small Business Administration, and other Federal or State programs offering assistance to persons to be displaced;

(6) Endeavor to minimize the adverse social, economic, cultural and other hardships and impacts of relocation on persons involved in adjusting to such relocation.

(c) *Coordination of relocation activities.* The Commission shall, to the maximum extent feasible, coordinate its relocation assistance advisory services activities with existing local, state, federal and Tribal agencies to the extent necessary to enable it to carry out its program. Referrals of displaced persons for services to existing services providers will be utilized whenever possible.

(d) *Policy.* The Commission shall continue to provide assistance to a family, individual, business concern, non-profit organization, or farm operation until relocation has been achieved unless section § 700.139 becomes applicable.

(e) *Reasons for terminating assistance.* In general, the circumstances under which the Commission's relocation obligations cease are the following:

(1) Two years have elapsed since the family or individual has moved to a decent, safe and sanitary replacement dwelling and has received all assistance payments to which entitled.

(2) All reasonable efforts to trace a family or individual have failed.

(3) The family or individual on his/her own initiative moves to substandard housing and has refused reasonable offers of additional assistance in moving to a decent, safe and sanitary replacement dwelling.

(4) The business concern, farm operation, or non-profit organization has received all assistance and payments to which it is entitled, and has either been successfully relocated or ceased operations.

(5) Other relevant reasons as determined by the Commission.

§ 700.137 Final date for voluntary relocation application.

(a) In order to be considered for voluntary relocation assistance benefits, an applicant must have filed a completed application form with the Commission by the close of business on July 7, 1986.

(b) To qualify for relocation assistance, individuals must meet the eligibility requirements as of July 7, 1986.

[51 FR 19170, May 28, 1986]

§ 700.138 Persons who have not applied for voluntary relocation by July 7, 1986.

(a) Pursuant to 25 U.S.C. 640d–14 (d)(3) heads-of-household who do not make timely arrangements for relocation by filing an application by July 7, 1986, shall be provided a replacement home by the Commission. To be eligible for benefits (Housing and Moving Expenses), such persons must be, as of July 7, 1986, physically residing full time on land partitioned to a tribe of which they are not members and they must also otherwise meet all other current eligibility criteria.

(b) The Commission shall utilize amounts payable with respect to such households pursuant to 25 U.S.C. 640d–14(b)(2) and 25 U.S.C. 640d–34(a) for the construction or acquisition of a home and related facilities for such households.

(c) Persons identified by the Commission as potentially subject to relocation who have not applied for relocation assistance shall be contacted by the Commission as soon as practicable after July 7, 1986. At such time, the Commission shall—

(1) Request that the head-of-household choose an available area for relocation, and contract with the Commission for relocation; and

(2) Offer the relocatee suitable housing; and

(3) Offer to purchase from the head-of-household the habitation and improvements; and

(4) Offer provisions for the head-of-household and his family to be moved (e.g., moving expenses, etc.).

(d) If a person so identified fails to agree to move after the actions outlined in this section are taken by the Commission and suitable housing is available (or sufficient funds are available to assure the relocation assistance to which the relocatee may be entitled), the Commission will issue a ninety-day notice stating the date by which the person will be required to vacate the area partitioned to the Tribe of which he is not a member.

[51 FR 19170, May 28, 1986]

§ 700.139 Referral for action.

Upon the expiration of all notice periods and upon the failure or refusal of any relocatees to make timely arrangements to move, the Commission shall forward the names and addresses of such relocatees to the Secretary of the Interior and to the U.S. Attorney for the District of Arizona for such action as they deem appropriate. The Commission will assure the availability of relocation assistance to which the relocatees may be entitled.

§ 700.141 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment under subpart D, E, F, G, or H of this part shall be submitted to the Commission on the appropriate Commission form and supported by such documentation as may reasonably be required by the Commission to demonstrate expenses incurred, such as bills and receipts.

(b) *Time for filing.* All claims for a relocation payment shall be filed with the Commission within sixty (60) days after the family occupies the replacement home unless this time period is extended by the Commission.

(c) *Direct payment of claim.* Relocation payments shall be made in accordance with the terms of the Relocation Contracts and are not subject to claims of creditors or assignments.

§ 700.143 Payments for divorced or separated relocatees.

General. The following considerations apply to certified eligible heads of household who are legally separated or divorced and intend to establish separate eligibility.

(a) Determination of benefits. Eligibility for relocation benefits is determined as of the time that the Relocation Contract is signed.

(1) If the divorce or separation took place before benefits were first applied for, the spouse who vacated the habitation will not be eligibile for benefits and all relocation benefits will accrue to the spouse remaining in occupancy as head of the household remaining to be relocated.

(2) If both husband and wife are in possession of the habitation at the time that benefits are first applied for, and are divorced or separated prior to signing of a Relocation Contract, both husband and wife may qualify separately for benefits if each meets the requirements of eligibility under these regulations.

(3) If both husband and wife are in possession of the habitation at the time a Relocation Contract is signed but are divorced or separated prior to occupancy of the replacement dwelling, only one benefit will be paid to the household. Such benefits (including the assistance payment, moving expenses and replacement dwelling benefit) and the purchase price of the habitation and improvements may be prorated between husband and wife in such manner as they may agree in writing so long as such proration is consistent with the terms of the Relocation Contract. Such proration may also be made by a court of competent jurisdiction. In the absence of an agreement between the parties or a court order, any necessary prorations shall be made by the Commission.

(b) For purposes of this section, a head of household shall be considered as married even though living apart from his or her spouse unless legally separated under a decree or separate maintenance.

[47 FR 17988, Apr. 27, 1982]

§ 700.145 Payments to estates.

(a) Relocation benefits can be paid to the estate of a deceased Certified Eligible Head of Household under the following circumstances:

(1) If there is no household requiring relocation pursuant to the Act surviving the deceased head of household:

(i) Compensation for the habitation and other improvements owned by the deceased head of household and the cost of removing personal property from the acquired habitation and other improvements shall be paid to the estate of a deceased head of household, or as otherwise directed by a court of competent jurisdiction.

(ii) No replacement housing benefit or assistance payment (bonus) shall be paid under this circumstance.

(2) Replacement housing benefits may be paid to an estate only when a certified eligible head of household was qualified for such a housing payment pursuant to the Act and signed a Relocation Contract but died before the replacement housing was occupied. The estate of a certified eligible head of household who had not signed a Relocation Contract at the time of his/her death is not eligible for payment of a replacement housing benefit.

(b) If one of a married couple who was a certified eligible head of household dies, the surviving spouse may be paid the same relocation assistance benefits, including replacement housing payments, which the couple would have received had death not occurred. If there is no surviving spouse, a court of competent jurisdiction may appoint a guardian to act for minor members of the household. The Commission shall deal with such guardian and any members of the household who have attained their majority in a manner to

effect relocation of the remaining household under these regulations.

[47 FR 17988, Apr. 27, 1982]

§ 700.147 Eligibility.

(a) To be eligible for services provided for under the Act, and these regulations, the head of household and/or immediate family must have been residents on December 22, 1974, of an area partitioned to the Tribe of which they were not members.

(b) The burden of proving residence and head of household status is on the applicant.

(c) Eligibility for benefits is further restricted by 25 U.S.C. 640d–13(c) and 14(c).

(d) Individuals are not entitled to receive separate benefits if it is determined that they are members of a household which has received benefits.

(e) Relocation benefits are restricted to those who qualify as heads-of-household as of July 7, 1986.

[49 FR 22278, May 29, 1984, as amended at 51 FR 19170, May 28, 1986]

Subpart D—Moving and Related Expenses, Temporary Emergency Moves

§ 700.151 Eligibility.

(a) *General.* All certified eligible heads of household are eligible for moving and related expenses as prescribed in this subpart. A certified eligible head of household who lives on his/her business or farm property may be eligible for both a payment as a dwelling occupant and a payment with respect to the business or farm operation.

(b) *Least costly approach.* The amount of payment for an eligible expense under this subpart shall not exceed the least costly method, as determined by the Commission, of accomplishing the objective of the payment without causing undue hardship to the certified eligible heads of household.

(c) *Prior approval.* Written approval of the Commission must be obtained for all moving and search expenses in this subpart. Such approval shall be obtained by each certified eligible head of household prior to incurring any expense from the real estate specialist to whom the case is assigned. If prior approval and the amount thereof is not obtained from the Commission, the Commission thereafter will determine:

(1) Whether the travel was required and the expenses reasonable and;

(2) The amount of reimbursement to be paid, if any.

§ 700.153 Actual reasonable moving and related expenses—residential moves.

Subject to the limitations contained in this subpart, a certified eligible head of household is entitled to actual reasonable expenses for—

(a) Transportation computed at prevailing federal per diem and mileage allowance schedules, meals and lodging away from home required by the Commission.

(b) Transportation computed at prevailing federal per diem and mileage allowance schedules of the household and personal property from the acquired site to the replacement site.

(c) Packing, crating, unpacking and uncrating of the personal property.

(d) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances, and other personal property;

(e) Storage of the personal property, not to exceed one year unless extended by the Commission.

(f) Insurance of the personal property in connection with the move and necessary storage; and

(g) Other moving related expenses that are not listed as ineligible under § 700.165, as the Commission determines to be reasonable and necessary.

§ 700.155 Expenses in searching for replacement dwelling—residential move.

(a) A certified eligible head of household is entitled to actual reasonable expenses incurred in the search for a replacement dwelling.

(b) Transportation, meals and lodging when required to be away from home by the Commission, computed at prevailing federal per diem and mileage allowance schedules.

§ 700.157 Actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs.* Subject to the limitations of § 700.151(c) a certified eligible business, farm operation or nonprofit organization is entitled to payment for actual reasonable expenses for:

(1) Transportation of personal property from the acquired site to the replacement site.

(2) Packing, crating, unpacking, and uncrating the personal property.

(3) Disconnecting, dismantling, removing, reassembling and installing relocated and substitute machinery, equipment, and other personal property. This includes connection to utilities available nearby and modifications necessary to adapt such property to the replacement structure or to the utilities or to adapt the utilities to the personal property;

(4) Storage of the personal property;

(5) Insurance of personal property in connection with the move and necessary storage;

(6) Any license, permit or certification required by the displaced person, to the extent such cost is (i) necessary to its re-establishment at the replacement location and (ii) does not exceed either the cost for one year or for the remaining useful life of the existing license, permit, or certification, whichever is less;

(7) Professional services, including architect's, attorney's and engineer's fees, and consultant's charges, necessary for (i) planning the move of the personal property, (ii) moving the personal property, or (iii) installing the relocation personal property at the replacement location.

(8) Relettering signs and printing replacement stationery made obsolete as a result of the move;

(9) Actual direct loss of personal property;

(10) Purchase of substitute personal property;

(11) Searching for a replacement location;

(12) Other moving-related expenses that are not listed as ineligible under § 700.165.

(b) *Self-move.* If the displaced person self-moves his business, farm operation, or nonprofit organization, the Commission may approve a payment for his moving expenses in an amount not to exceed the lowest acceptable bid or estimate obtained by the Commission, without submission of documentation of moving expenses actually incurred.

(c) *Notification to Commission and inspection.* To be eligible for a payment under this section, the displaced person shall permit the Commission to make reasonable and timely inspections of the personal property at the displacement and replacement sites.

§ 700.159 Payment for direct loss of personal property—nonresidential moves.

(a) *General.* A certified eligible business is entitled to payment for actual direct loss of an item of tangible personal property incurred as a result of moving or discontinuing his business, farm operation, or nonprofit organization. The payment shall consist of the reasonable costs incurred in attempting to sell the item plus the less of—

(1) The fair market value of the item for continued use at the acquired site, less the proceeds from its sale. (When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price); or

(2) The estimated cost of moving the item, but with no allowance for storage. (If the business, farm operation or nonprofit organization is discontinued, the estimated cost shall be based on a moving distance of 50 (fifty) miles.)

(b) *Advertising sign.* The amount of a payment for direct loss of an advertising sign, which is personal property, shall be the lesser of—

(1) The depreciated reproduction cost of the sign as determined by the Commission, less the proceeds from its sale; or

(2) The estimated cost of moving the sign.

(c) *Sales effort.* To be eligible for payment for direct loss of personal property, the claimant must make good faith effort to sell the personal property, unless the Commission determines that no such effort is necessary.

(d) *Transfer of ownership.* To be eligible for payment for direct loss of personal property, the claimant shall transfer to the Commission ownership of the unsold personal property.

§ 700.161 Substitute personal property—nonresidential moves.

(a) *General.* If an item of personal property, which is used as part of a business, farm operation or nonprofit organization, is not moved but is promptly replaced with a comparable substitute item at the replacement site, the displaced person is entitled to payment of the lesser of—

(1) The cost of the substitute item, including installation cost at the replacement site, minus any proceeds from the sale or trade-in of the replaced item, if any; or

(2) The estimated cost of moving the replaced item, based on the lowest acceptable bid or estimate obtained by the Commission for eligible moving and related expenses, but with no allowance for storage.

(b) *Transfer of ownership.* To be eligible for a payment under this section, the claimant shall transfer to the Commission ownership of the personal property that has not been sold or traded in.

§ 700.163 Expenses in searching for replacement location—nonresidential moves.

A displaced business, farm or nonprofit organization is entitled to an amount not to exceed $500 (five-hundred dollars), as determined by the Commission, for actual reasonable expenses incurred in searching for a replacement location, including—

(a) Transportation computed at prevailing federal per diem and mileage allowance schedules; meals and lodging away from home;

(b) Time spent searching, based on reasonable earnings;

(c) Fees paid to a real estate agent or broker to locate a replacement site.

§ 700.165 Ineligible moving and related expenses.

A displaced person is not entitled to payment for—

(a) The cost of moving any structure or other improvement in which the displaced person reserved ownership; or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Physical changes at replacement location of business, farm or nonprofit organization, except as provided at § 700.157; or

(g) Any additional expense of a business, farm, or nonprofit organization incurred because of operating in a new location.

§ 700.167 Moving and related expenses—fixed payment.

A displaced person (other than an outdoor advertising display business who is eligible for a payment for his actual moving and related expenses under subpart D of these regulations) is entitled to receive a fixed payment in lieu of a payment for such actual moving and related expenses.

§ 700.169 Fixed payment for moving expenses—residential moves.

The fixed payment for moving and related expenses of a certified eligible head of household from a dwelling consists of—

(a) A moving expense allowance not to exceed $300 (three hundred dollars).

(b) A dislocation allowance of $200 (two hundred dollars).

§ 700.171 Fixed payment for moving expenses—nonresidential moves.

(a) *General.* The fixed payment for moving and related expenses of a displaced business or farm operation that meets applicable requirements under this section is an amount equal to its average annual net earnings as computed in accordance with § 700.173, but not less than $2,500 nor more than $10,000. A nonprofit organization which meets the applicable requirements under this section is entitled to a payment of $2,500.

(b) *Business.* A business qualifies for payment under this section if the Commission determines that—

(1) The business cannot be relocated without a substantial loss of its existing patronage.

(2) The business is not part of a commercial enterprise having another establishment, which is not being acquired by the Commission, and which is under the same ownership and engaged in the same or similar business activities. For purposes of this rule, no remaining business facility which had average annual gross receipts of less than $1,000 and average annual net earnings of less than $500, during the two taxable years prior to displacement, shall be considered ''another establishment''; and

(3) The business had (i) average annual gross receipts of at least $1,000 during the two taxable years prior to displacement, or (ii) average annual net earnings of at least $500 as determined in accordance with § 700.173. However, the Commission may waive this test in any case in which it determines that its use would cause a substantial hardship.

(c) *Determining number of businesses acquired.* In determining whether two or more legal entities, all of which have been acquired, constitute a single business, which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which—

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business, and

(4) The same person or closely related persons own, control or manage the affairs of the entities.

(d) *Farm operation.* A farm operation qualifies for a payment under this section if the Commission determines that it meets the criteria set forth in § 700.171(b)(3). In the case of a partial acquisition, the fixed payment shall be made only if the Commission determines that—

(1) The part acquired was a farm operation before the acquisition; or

(2) The partial acquisition caused the operator to be displaced from the farm operation; or

(3) The partial acquisition caused a substantial change in the nature of the farm operation.

(e) *Nonprofit organization.* A nonprofit organization qualifies for a $2,500 payment under this section, if the Commission determines that it—

(1) Cannot be relocated without a substantial loss of existing patronage (membership and clientele). A nonprofit organization is assumed to meet this test, unless the Commission demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Commission.

§ 700.173 Average net earnings of business or farm.

(a) *Computing net earnings.* For purposes of this subpart, the average annual net earnings of a business or farm operation is one-half of its net earnings before Federal, State and local income taxes, during the two taxable years immediately prior to the taxable year in which it was displaced. However, if the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be computed on the basis of the actual period of operation on the acquired site, projected to an annual rate. Also, average annual net earnings may be based upon a different period of time when the Commission determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, his spouse, or dependents.

(b) *Documentation.* A displaced person who elects to receive a fixed payment in lieu of actual expenses incurred in moving his business or farm shall furnish the Commission proof of his net earnings through income tax returns, certified financial statements or other reasonable evidence.

§ 700.175 Temporary emergency moves.

(a) *General.* An eligible household may be granted temporary relocation resources, at the Commission's discretion, provided:

(1) That the move is for a limited time period not to exceed 12 months unless extended by the Commission.

(2) That permanent relocation resources are not available at the time of displacement.

(3) Prior approval of the Commission is obtained.

(4) That a Relocation Contract providing for permanent relocation has been executed.

(5) The head of household actually remained domiciled on lands partitioned to the tribe of which he is not a member as of December 22, 1974, and continuously thereafter.

(6) The head of household shall vacate all improvements owned by him on lands partitioned to the tribe of which he is not a member and shall transfer title to said improvements to the Commission.

Temporary relocation shall in no way diminish the responsibility of the Commission to offer relocation assistance and services designed to achieve permanent and suitable facilities.

(b) *Conditions under which move to temporary housing accommodations may be approved.* The move of a family or individual into temporary housing accommodations may be approved by the Commission only if the following conditions are met.

(1) The move will be undertaken because:

(i) It is necessary because of an emergency as determined by the Commission; or

(ii) The individual or family is subject to conditions hazardous to his or his family's health or safety.

(2) The temporary housing is decent, safe, and sanitary.

(3) The Commission shall have determined that within twelve (12) months of the date of the temporary move, replacement housing meeting Commission-approved standards will be available for occupancy by the persons temporarily rehoused.

(4) Prior to the move, the Commission shall provide in writing assurance to each head of household that:

(i) Replacement housing will be available at the earliest possible time but in any event no later than twelve (12) months from the date of the move to temporary housing.

(ii) Replacement housing will be made available on a priority basis, to the individual or family who has been temporarily rehoused.

(iii) The move to temporary rehousing will not, in any way, affect a claimant's eligibility for a replacement housing payment nor deprive him of the same choice or replacement housing units that would have been made available had the temporary move not been made.

(iv) The Commission will pay all costs in connection with the move to temporary housing, including any increased housing costs.

(c) *Agency documentation.* To request Commission approval for a temporary move of a family, the following information shall be submitted to the Commission (additional information may be required on a case-by-case basis):

(1) An explanation of the necessity for the temporary move, based upon the criteria set forth by the Commission.

(2) The estimated duration of the temporary occupancy.

(3) In the case of the family or individual, (i) a copy of the written assurance which will be provided to the person explaining his rights and the continuing obligation of the agency to provide relocation assistance, and (ii) evidence that the family or individual agrees to make the temporary move.

(d) *Costs in connection with temporary move*—(1) *Costs included.* Costs included in a temporary move may cover the following:

(i) Actual reasonable moving costs and related expenses for the move to temporary accommodations.

(ii) For the family or individual moved from a rental unit the difference, if any, between the rental cost of the dwelling vacated and the rental cost of the temporary unit.

(iii) For a homeowner who retains ownership of his dwelling the reasonable cost of renting the temporary dwelling.

(iv) For a homeowner whose dwelling has been acquired the difference, if any, between his housing costs for the acquired dwelling and the rental cost of the temporary unit.

(2) *Costs not a replacement home benefit.* Costs in connection with a move to

temporary accommodations are not to be considered as relocation payments under the Act. (See paragraph (e) of this section.)

(e) *Distinguishing between cost of temporary move and relocation payment.* The costs of a temporary move, as decribed in the foregoing subparagraphs, are not to be considered as all or a part of the relocation payment to which a displaced person is entitled under the Act. Thus, when a family is moved to temporary accommodations, a relocation payment is *not* made and the election or choice of type of payments that would ordinarily be made upon displacement must be delayed until the final move is made. When the move out of temporary accommodations is made, the displaced person shall receive the full relocation payments to which he/she is entitled pursuant to Commission regulations.

Subpart E—Replacement Housing Payments

§ 700.181 Eligibility.

(a) *Basic eligibility requirements.* A certified eligible head of household who established his/her residency requirements in the area partitioned to the tribe of which he/she is not a member, is eligible for the replacement housing payment specified at § 700.183(a).

(b) *Other rules and requirements.* A payment under this subpart E is subject to the other applicable rules and requirements of these regulations.

§ 700.183 Determination of replacement housing benefit.

(a) *Amount of benefit.* The replacement housing benefit for a certified eligible head-of-household is an amount not to exceed fifty-five thousand dollars ($55,000) for a household of three or less and not to exceed sixty-six thousand dollars ($66,000) for a household of four or more. Subject to such other requirements of these regulations as may apply, the replacement housing benefit shall be calculated as follows;

(1) The amount of the fair market value of the habitation and improvements purchased from an eligible head-of-household pursuant to subpart B of this part shall be applied first toward the cost of a replacement dwelling.

(2) An additional amount shall be added to the value of the habitation and improvements to equal the cost of a decent, safe, and sanitary replacement dwelling.

(3) The total value of the replacement dwelling shall not exceed the amount of the replacement housing benefit specified in paragraph (a) of this section.

(4) In the event the cost of providing a decent, safe, and sanitary replacement dwelling is less than the fair market value of the habitation and improvements purchased from an eligible head-of-household pursuant to subpart B of this part, the difference shall be paid to that head-of-household.

(b) The Commission shall, on or before the first Friday in April of each fiscal year, after consultation with the Secretary of the Department of Housing and Urban Development, annually increase, decrease or leave unadjusted the above limitations on replacement housing benefits to reflect changes in housing or development and construction costs, other than costs of land, during the preceding year. In determining whether to increase or decrease the replacement housing benefit limitations set forth above, the Commission shall consider the following:

(1) The most recent percentage rate of increase or decrease in single family housing construction costs reported by HUD. (General Prototype Housing Costs For One to Four Family Dwelling Units).

(2) The most recent Boecht Building Cost Modifier.

(3) The experience of relocatee families in obtaining replacement housing within the current benefits.

(4) The cost of available replacement housing which meets Commission standards as set forth in these regulations.

(5) Such other available information which the Commission deems appropriate and which is relevant to a determination of whether replacement housing benefits should be increased or decreased to reflect change in housing or development and construction costs during the preceding year.

(c) If the owner retains ownership of his dwelling, moves it from the acquired site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be considered to be the sum of—

(1) The cost of the replacement site, if any; plus

(2) The moving and restoration expenses; plus

(3) The costs, if any, incurred to make the unit a decent, safe, and sanitary replacement dwelling; but not to exceed the above limitation on total replacement home benefits.

[47 FR 17988, Apr. 27, 1982, as amended at 52 FR 21951, June 10, 1987]

§ 700.187 Utilization of replacement home benefits.

The Commission shall assure that all eligible heads of household receive a decent, safe and sanitary replacement dwelling in the following manner:

(a) If the eligible head of household owns no dwelling other than that on the area from which he or she must move pursuant to the Act, the Commission will make funds available to the head of household as provided in these regulations for the acquisition of a replacement home in one of the following manners:

(1) Purchase of an existing home, by the head of household,

(2) Construction of a home by the head of household,

(3) Participation or purchase by the head of household in a mutual help housing or other home ownership project under the U.S. Housing Act of 1937 (50 Stat. 888, as amended; 42 U.S.C. 1401) or in any other federally assisted housing program.

(b) If the eligible head of household owns or is buying or building a home in an area other than the area from which he or she must move pursuant to the Act, the Commission will expend relocation benefits in one of the following manners:

(1) If the home is decent, safe, and sanitary, but is encumbered by a mortgage, such mortgage existing as of the effective date of these regulations, the Commission will expend replacement housing benefits up to the maximum then existing benefit to accelerate to the maximum extent possible the achievement by that household of debt-free home ownership.

(2) If the home is owned free and clear but does not meet Commission decent, safe, and sanitary standards, the Commission will, at its discretion, either:

(i) Expend replacement home benefits for improvements to assure the home meets decent, safe, and sanitary standards, or

(ii) Expend replacement home benefits for the acquisition of a replacement dwelling as if the eligible head of household or spouse did not own a home as in paragraph (a) of this section.

(3) If the home is neither owned free and clear nor decent, safe, and sanitary, the Commission will, at its discretion, either:

(i) Expend replacement home benefits for improvements to assure that the home meets decent, safe, and sanitary standards, and to accelerate to the maximium extent possible the achievement of debt-free home ownership, or

(ii) Expend replacement home benefits for the acquisition of a replacement dwelling as if the eligible head of household or spouse did not own a home as in paragraph (a) of this section.

(4) If the home is decent, safe, and sanitary, and is owned free and clear, no replacement home benefits will be paid.

(c) Home improvements shall include the following: General repairs, painting and texturing, fencing—including corrals, landscaping, grading, room additions, re-modeling, roofing, insulating, repair or improvements to the water, sewerage, cooling, heating, or electrical systems, storage buildings, energy conservation measures, and other home improvements as determined and defined by the Commission.

(d) In implementing these regulations the Commission will encourage the use of innovative energy or other technologies in order to achieve the minimum monthly housing cost feasible for each replacement house.

§ 700.189 Expenditure of replacement home benefits.

Replacement home benefits shall be expended or obligated in full at or before the time of original acquisition except as stated below. It is not anticipated that such exceptions would be common and each such instance shall be reviewed and a determination will be made by the Certification Officer.

(a) Under unusual circumstances such as: Unknown (latent) defects in the replacement dwellings, significant change of circumstances and extreme hardship, benefits may be expended after the time of original acquisition up to the the existing maximum replacement home benefit.

(b) All replacement home benefits shall be expended not later than one (1) year after the date of payment of the incentive bonus, except under unusual circumstances as stated above, up to the statutory maximum.

(c) Replacement home benefits shall not be expended for maintenance except under unusual circumstances as stated above, up to the statutory maximum.

(d) For purposes of this paragraph, the time of original acquisition shall be defined as the date of execution of the Commission's Relocation Contract.

Subpart F—Incidental Expenses

§ 700.195 General.

Incidental expenses are those reasonable expenses, as determined by the Commission, to be incidental to the purchase of the replacement dwelling, but not prepaid.

§ 700.197 Basic eligibility requirements.

A certified eligible head of household is eligible for reimbursement of expenses that are incidental to the purchase of a replacement dwelling, as provided in § 700.199 hereof.

§ 700.199 Incidental expenses.

(a) *Eligible costs.* Subject to the limitations in paragraphs (b) and (c) of this section, the incidental expenses to be paid are those actually incurred by the displaced person incident to the purchase of the replacement dwelling, including—

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing plats, recording fees; and title insurance;

(2) Lender, FHA or VA appraisal fees;

(3) FHA or VA application fee;

(4) Certification of structural soundness when required by the lender;

(5) Credit report;

(6) Owner's and mortgagee's evidence or assurance of title;

(7) Escrow agent's fee;

(8) State revenue or documentary stamps, sales or transfer taxes;

(9) Such administrative costs as are necessary to secure and acquire homesite leases and/or allotments on tribal lands. These costs may include survey fees, appropriate tribal fees and other conveyance instruments as may be appropriate;

(10) Costs, such as advertising charges, incurred incident to the purchase of the improvements owned by the head of household.

(11) Cost related to fee inspector's inspections of the replacement dwelling.

(12) Such other costs as the Commission determines to be incidental to the purchase.

(b) *Truth in lending charge.* Any expense, which is determined to be part of the debt service or finance charge under 15 U.S.C. 131–1641 and Regulation Z (12 CFR Part 226) issued thereunder by the Board of Governors of the Federal Reserve System, is not eligible for reimbursement as an incidental expense.

Subpart G—Assistance Payments (Incentive Bonus)

§ 700.205 Eligibility requirements.

A certified eligible head of household is eligible for the assistance payment pursuant to section 14(b) of the Act.

(a) *Amount of payment.* The amount of payment shall be computed in accordance with the schedule provided for in section 14(b) of the Act.

(b) *Date for determination of amount of assistance payment.* The date of completion and filing with the Commission of the Application for Relocation Assistance and Agreement to Relocate shall

be the date used for determination of the amount of the assistance payment.

(c) *Time of payment.* Assistance payments provided for in this section shall only be paid upon actual occupancy of the replacement dwelling and vacation of the acquired habitation and/or improvement, if any, in the area partitioned to the Tribe of which he/she is not a member.

Subpart H—Last Resort Replacement Housing

§ 700.209 Applicability.

The provisions of this subpart apply only when the Commission determines that, unless it acts under the provisions of this subpart, there is a reasonable likelihood that replacement dwelling(s) will not be available on a timely basis to person(s) to be displaced.

§ 700.211 Basic rights and rules.

The provisions of this subpart do not deprive any displaced person of any rights described elsewhere in these regulations. The Commission may meet its obligation to provide persons with reasonable opportunities to relocate to a replacement dwelling by offering such opportunities developed or to be developed under this subpart.

§ 700.213 Methods of providing last resort replacement housing.

(a) *General.* The methods of providing last resort housing include, but are not limited to—

(1) Rehabilitation of, and/or additions to, an existing replacement dwelling;

(2) A replacement housing payment in excess of the limits set forth in subparts E and F of this part or the provision of direct Commission mortgage financing;

(3) The construction of a new replacement dwelling;

(4) The relocation and, if necessary, rehabilitation of a replacement dwelling;

(5) The purchase of land and/or a replacement dwelling by the Commission and subsequent sale or lease to, or exchange with, a displaced person; and

(6) The removal of barriers to the handicapped as may be necessary.

Subpart I—Commission Operations

§ 700.219 General.

(a) The operation of the Commission shall be governed by a Management Manual passed, amended or repealed by a majority of the Commission at any regular or special meeting. The Management Manual is the prescribed medium for publication of policies, procedures and instructions which are necessary to facilitate the day-to-day operations and administration of the Commission.

(b) *Meetings.* The Commission shall hold a regular monthly meeting on the first Friday of each month at a time and place designated by public notice unless said Friday falls on a legal holiday, in that event, the meeting shall begin on the next regular workday. The monthly meeting may continue for as many days thereafter as is necessary to complete the regular affairs of the Commission, and may be recessed from time to time and reconvened at times designated by the Chairperson.

(c) *Special public meetings.* May be called by any Commissioner with ten (10) working days written notice given to the other Commissioners. Written notice may be waived by a release bearing the signatures of all three Commissioners.

(d) *Executive Session.* During a regular or special meeting, any Commissioner may request an Executive Session for purposes of personnel and administrative matters.

(e) *Compliance with other laws and regulations.* As a federal agency, the Commission will conduct its activities in conformance with applicable federal statutes and administrative procedures.

Subpart J—Inspection of Records

§ 700.235 Purpose and scope.

(a) This subpart contains the regulations of the Commission implementing the requirement of subsection (a)(3) of the Freedom of Information Act, 5 U.S.C. 552(a)(3), which provides that the Commission ''upon any request for records which (1) Reasonably describes

such records and (2) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.'' This subpart describes the procedures by which records may be obtained from the Commission. The procedures in this subpart are not applicable to requests for records published in the FEDERAL REGISTER or opinions in the adjudication of cases, statements of policy and interpretations and administrative staff manuals which have been published or made available under subpart A of this part.

§ 700.237 Definitions.

Act. As used in this subpart, ''Act'' means the ''Freedom of Information Act,'' 5 U.S.C. 552.

§ 700.239 Records available.

(a) *Commission policy.* It is the policy of the Commission to make the records of the Commission available to the public to the greatest extent possible, in keeping with the spirit of the Freedom of Information Act.

(b) *Statutory disclosure requirement.* The Freedom of Information Act requires that the Commission, on a request from a member of the public to inspect or copy records made in accordance with the procedures in this subpart, shall promptly make the records available.

(c) *Statutory exemptions.* The Act exempts nine categories of records from this disclosure requirement. The Act provides that disclosure is not required of matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempt from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that production of such records would

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the indentity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Decisions on requests.* It is the policy of the Commission to withhold information falling within an exemption only if (1) disclosure is prohibited by statute or Executive Order or (2) sound grounds exist for invocation of the exemption.

(e) *Deletion of portions of records.* If a requested record contains material within an exemption together with material not within an exemption and it is determined under the regulations in this subpart to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material.

(f) *Creation of records.* This subpart applies only to records which exist at the time a request for records is made. Records are not required to be created in response to a request by combining

or compiling selected items from the files or by preparing a new computer program, nor are records required to be created to provide the requester with such data as proportions, percentages, frequency distributions, trends, or comparisons.

(g) *Records of concern to other departments and agencies.* (1) If the release of a record would be of concern to both the Commission and another Federal agency, the record will be made available by the Commission only if the interest of the Commission is the primary interest. If the Commission's interest is not the primary interest, the requester shall be referred in writing to the agency having the primary interest. The Commission has the primary interest in a record if the record was developed pursuant to Commission regulations, directives, or request even though the record originated outside of the Commission.

(2) If the release of a record in which the Commission has a primary interest would be of substantial concern to another agency, the official processing the request, should, if administratively feasible and appropriate, consult with that agency before releasing the record.

(h) *Records obtained from the public.* If a requested record was obtained by the Commission from a person or entity outside of the Government, the official responsible for processing the request shall, when it is administratively feasible to do so, seek the views of that person or entity on whether the record should be released before making a decision on the request.

§ 700.241 Request for records.

(a) *Submission of requests.* A request to inspect or copy records shall be made to the installation where the records are located. If the records are located at more than one installation or if the specific location of the records is not known to the person wishing to inspect or copy the records, he may direct his request to the head of the appropriate bureau, or the bureau's chief public information officer, if any.

(b) *Form of request.* (1) Requests invoking the Freedom of Information Act shall be in writing.

(2)(i) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Commission familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, and the person or office that made it, the present custodian of the record, and any other information which will assist in location of the requested records. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case.

(ii) If the description of a record sought is insufficient to allow identification and location of the record, the response denying the request on this ground shall so state and, to the extent possible, indicate what additional descriptive information, if any, would assist in location of the record.

(3) A request shall state the maximum amount of fees which the requester is willing to pay. Requesters are notified that under § 700.251, the failure to state willingness to pay fees as high as are anticipated by the Commission will delay running of the time limit and delay processing of the request, if the responsible official anticipates that the fees chargeable may exceed $25.00.

(4)(i) To insure expeditious handling, requests shall be prominently marked, both on the envelope and on the face of the request, with the legend ''FREEDOM OF INFORMATION REQUEST.'' The failure of a request to bear such a legend will not disqualify a request from processing under the procedures in this subpart if the request otherwise meets the requirments of this section. A request not bearing the legend ''FREEDOM OF INFORMATION REQUEST'' will not, however, be deemed to have been received for purposes of the running of the time limit set out in § 700.245 until it has been identified by bureau personnel as a Freedom of Information request and marked by them with this legend.

(ii) Commission personnel identifying a communication from the public not bearing the legend ''FREEDOM OF INFORMATION REQUEST'' as a request otherwise meeting the requirements of this section shall immediately (A) mark the communication with the legend ''FREEDOM OF INFORMATION REQUEST.'' (B) date the request to reflect the date on which it was identified, and (C) take steps to assure proper processing of the request under the procedures in this subpart.

(d) *Categorical requests.* (1) A request for all records falling within a reasonably specific category shall be regarded as conforming to the statutory requirement that records be reasonably described if (i) it can be determined which particular records are covered by the request and (ii) the records can be searched for, collected and produced without unduly burdening or interfering with Commission operations because of the staff time consumed or the resulting disruption of the files.

(2) If a categorical request is determined under paragraph (d)(1) of this section not to reasonably describe the records requested, the response denying the request on that ground shall specify the reasons why and shall extend to the requester an opportunity to confer with knowledgeable Commission personnel in an attempt to reduce the request to manageable proportions by reformulation and by agreeing on an orderly procedure for the production of the records.

§ 700.243 Action on initial requests.

(a) *Granting of requests.* (1) A requested record shall be made available if (i) the record is not exempt from disclosure or (ii) the record is exempt from disclosure, but its withholding is neither required by statute or Executive order nor supported by sound grounds.

(b) *Form of grant.* (1) When a requested record has been determined to be available, the official processing the request shall immediately notify the person requesting the record as to where and when the record is available for inspection or as the case may be, where and when copies will be available. If fees are due under § 700.251, the responsible official shall also state the amount or, if the exact amount cannot be determined, the approximate amount of fees due.

(2) If the record was obtained by the Commission from a person or entity outside of the Government, the responsible official shall, when it is administratively feasible to do so, notify that person or entity that the record has been made available.

(c) *Denial of requests.* (1) A request for a record may be denied only if it is determined that (i) the record is exempt from disclosure and (ii) that withholding of the record is required by statute or Executive order or supported by sound grounds.

(2) A request to inspect or copy a record shall be denied only by the Freedom of Information Act Officer or by an official whom the Executive Director has in writing designated.

(d) *Form of denial.* A reply denying a request shall be in writing and shall include:

(1) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record;

(2) The sound ground for withholding;

(3) A listing of the names and titles or positions of each person responsible for the denial;

(4) A statement that the denial may be appealed to the Commission pursuant to § 700.247 and that such appeal must be in writing and be received by this official within twenty (20) days (Saturdays, Sundays, and public legal holidays excepted) after the date of the denial, in the case of the denial of an entire request, or within twenty (20) days (Saturdays, Sundays, and public legal holidays excepted) of records being made available, in the case of a partial denial, by writing to the Freedom of Information Act Officer, Navajo-Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

(e) *Exception.* The requirements of paragraphs (c), (d), and (e) of this section do not apply to requests denied under § 2.14 on the ground that the request did not reasonably describe the records requested or to requests for records which do not exist.

(f) *Filing of denials.* Copies of all replies denying, in whole or part, a request for a record which are issued under this section of § 700.243 shall be promptly submitted by the Freedom of Information Act Officer, denials to the Executive Director and the Commission's legal counsel.

§ 700.245 Time limits on processing of initial requests.

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within no more than ten (10) days (excepting Saturdays, Sundays, and legal public holidays) after receipt of a request. This determination shall be communicated immediately to the requester.

(b) *Running of basic time limit.* For purposes of paragraph (a) of this section, the time limit commences to run when a request is received at the Commission's office in Flagstaff, Arizona.

(c) *Extensions of time.* In the following unusual circumstances, the time limit for acting upon an initial request may be extended to the extent reasonably necessary to the proper processing of the particular request, but in no case may the time limit be extended for more than ten (10) working days:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(d) *Authority to make extensions.* (1) An extension of time under paragraph (c) of this section may be made only by the Freedom of Information Act Officer or such higher authority as the Commission has in writing designated.

(2) The person requesting the records shall be notified in writing of the extension. The written notice shall state the reason for the extension and the date on which a determination on the request is expected to be dispatched.

(3) The Freedom of Information Act Officer shall be responsible for promptly furnishing copies of such notices to the Executive Director and the Commission's legal counsel.

(e) *Treatment of delay as denial.* (1) If no determination has been reached at the end of the ten (10) day period for deciding an initial request, or the last extension thereof, the requester may deem his request denied and may exercise a right of appeal in accordance with the provisions of § 700.247.

(2) When no determination can be reached within the applicable time limit, the responsible official shall nevertheless continue to process the request. On expiration of the time limit, the responsible official shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial for purposes of appeal to the Commission in accordance with § 700.247. The requester may be asked to consider delaying use of his right to appeal until the date on which the determination is expected to be dispatched. If the requester so agrees, he is deemed not to have treated the failure to respond within the applicable time limit as a denial for purposes of the running of the twenty (20) working-day appeal period set out in § 700.247. If a determination of the request is not issued by the new agreed upon date, or if the request is denied in whole or part, the requester will have available his full right of appeal under § 700.247, including the entire twenty (20) working-day period for filing of the appeal.

§ 700.247 Appeals.

(a) *Right of appeal.* Where a request for records has been denied, in whole or part, the person submitting the request may appeal the denial to the Commission.

(b) *Time for appeal.* An appeal must be received no later than twenty (20) days (Saturdays, Sundays, and public legal holidays excepted) after the date of the initial denial, in the case of a denial of an entire request, or twenty (20) days

(Saturdays, Sundays, and public legal holidays excepted) after records have been made available, in the case of a partial denial.

(c) *Form of appeal.* (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to Freedom of Information Act Officer, Navajo-Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

(3)(i) Both the envelope containing the notice of appeal and the face of the notice shall bear the legend ''FREEDOM OF INFORMATION APPEAL''. The failure of an appeal to bear such a legend will not disqualify an appeal from processing under §2.18 if the appeal otherwise meets the requirements of this section. An appeal not bearing the legend ''FREEDOM OF INFORMATION APPEAL'' will not, however, be deemed to have been received for purposes of the running of the time limit set out in §700.249 until it has been identified by Commission personnel as a Freedom of Information appeal and marked by them with this legend.

(ii) Commission personnel identifying a communication from the public not bearing the legend ''FREEDOM OF INFORMATION APPEAL'' as an appeal otherwise meeting the requirements of this section shall immediately (A) mark the communication with the legend ''FREEDOM OF INFORMATION APPEAL,'' (B) date the appeal to reflect the date on which it was identified, and (C) take steps to assure proper processing of the appeal under the procedures in this subpart.

(4) The Freedom of Information Act Officer shall be responsible for promptly furnishing copies of such notices to the Executive Director and the Commission's legal counsel.

§ 700.249 Action on appeals.

(a) *Authority.* Appeals from initial denials of requests for records shall be decided for the Commission by the Executive Director after consultation with the Commission's legal counsel.

(b) *Time limit.* A final determination on any appeal shall be made within twenty (20) days (excepting Saturdays, Sundays, and public legal holidays) after receipt of the appeal.

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of §700.245 or was extended for fewer than ten (10) working days, the time for processing of the appeal may be extended by the Executive Director to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than ten (10) working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in §700.245(c) requires an extension.

(2) The Executive Director shall, in writing, advise the appellant of the reasons for the extension and the date on which a final determination of the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the twenty (20) working-day period for deciding an appeal, or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be reached within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review. The requester may be asked to consider delaying resort to his right to judicial review until the date on which the determination on his appeal is expected to be dispatched.

(d) *Form of decision.* The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the Freedom of Information Act Officer shall immediately make the records available or instruct the appropriate bureau official to make them immediately available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of his right to obtain judicial review in the U.S. District Court for the district in which the withheld records are located, or in which the requester resides or has his principal place of business or in the U.S. District Court for the District of Columbia, and shall set forth the names and titles or positions of each person responsible for the denial.

(e) *Distribution of copies.* Copies of final determinations issued by the Commission shall be provided to the Commission's legal counsel.

§ 700.251 Fees.

(a) *Services for which fees may be charged.* (1) Unless waived pursuant to the provisions of paragraph (c) of this section, user fees shall be charged for document search and duplication costs incurred in responding to requests for records. User fees also shall be charged for the formal certification of verification attached to authenticated copies of records under the seal of the Commission.

(2) Unless waived or reduced pursuant to paragraph (c) of this section, user fees shall be charged in accordance with the schedule of charges contained in the Commission's Management Manual.

(b) *Services for which fees may not be charged.* No fee may be charged for any services required by the Freedom of Information Act to be performed in responding to a request for records other than those services for which fees may be charged under paragraph (a) of this section. Services for which no fees may be charged include, but are not limited to,

(1) Examining requested records to determine whether they are exempt from mandatory disclosure or whether, even if exempt, they should nevertheless be made available in whole or part,

(2) Deleting exempt matter from records so that the remaining portions of the records may be made available,

(3) Monitoring a requester's inspection of agency records made available to him for inspection, and

(4) Resolving legal and policy issues affecting access to requested records.

(c) *Waiver or reduction of fees.* (1) Fees otherwise chargeable for document search and duplication costs incurred in responding to requests for records may be waived or reduced, as appropriate, if the official making the records available determines that furnishing the records can be considered as primarily benefiting the public as opposed to the requester.

(2) Fees otherwise applicable for document research and duplication costs incurred in responding to requests may be waived and not charged if the request involves:

(i) Furnishing unauthenticated copies of any documents reproduced for gratuitous distribution;

(ii) Furnishing one copy of a personal document (e.g., a birth certificate) to a person who has been required to furnish it for retention by the Commission;

(iii) Furnishing one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held.

(3) Fees otherwise chargeable for document search and duplication costs incurred in responding to requests may be waived or reduced if the cost of collecting the fee would exceed the amount of the fee or if the request involves:

(i) Furnishing records to press, radio and television representatives for dissemination through the media to the general public;

(ii) Furnishing records to donors with respect to their gifts;

(iii) Furnishing records to individuals or private non-profit organizations having an official voluntary or cooperative relationship with the Commission to assist the individual or organization in its work with the Commission;

(iv) Furnishing records to state, local and tribal governments and public

international organizations when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of the Commission and to do so will help to accomplish the work of the Commission;

(v) Furnishing records when to do so saves costs and yields income equal to the direct cost of providing the records (e.g., where the Commission's fee for the service would be included in a billing against the Commission);

(vi) Furnishing records when to do so is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former Commission employees);

(vii) Furnishing one copy of a record in order to assist the requester to obtain financial benefits to which he is entitled (e.g., veterans or their dependents, employees with Government employee compensation claims or persons insured by the Government).

(d) *Notice of anticipated fees and prepayment.* (1) Where it is anticipated that fees chargeable under this section may amount to more than $25.00 and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the request shall be deemed not to have been received for purposes of the time limits established by § 700.245 until the requester is advised of the fees which are anticipated and has agreed to pay these fees. Advice to requesters with respect to anticipated fees shall be provided promptly.

(2) The appropriate cases, advance payment of fees may be required before requested records are made available to the requester.

(3) A notice of anticipated fees or notice of request for advance payment shall extend an offer to the requester to confer with appropriate personnel in an attempt to reformulate the request in a manner which will reduce the anticipated fees and meet the needs of the requester.

(e) *Form of payment.* Payment of fees shall be made by check or money order payable to the Navajo-Hopi Indian Relocation Commission. The term United States or the initials ''U.S.'' shall not be included on the check or money order. Where appropriate, the official responsible for handling a request may require that payment by check be made in the form of a certified check.

Subpart K—Privacy Act

§ 700.255 Purpose and scope.

This subpart contains the regulations of the Navajo and Hopi Indian Relocation Commission implementing section 3 of the Privacy Act.

§ 700.257 Definitions.

(a) *Act.* As used in this subpart, ''Act'' means section 3 of the Privacy Act, 5 U.S.C. 552a.

(b) *Individual.* As used in this subpart, ''individual'' means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Maintain.* As used in this subpart, the term ''maintain'' includes maintain, collect, use or disseminate.

(d) *Record.* As used in this subpart, ''record'' means any item, collection, or grouping of information about an individual that is maintained by the Commission including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph.

(e) *System of records.* As used in this subpart, ''System of records'' means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(f) *Medical records.* As used in this subpart, ''medical records'' means records which relate to the identification, prevention, cure or alleviation of any disease, illness or injury including psychological disorders, alcoholism and drug addiction.

(g) *Civil Service Commission personnel records.* As used in this subpart, ''Civil Service Commission personnel records'' means records maintained for the Civil Service Commission by the Commission and used for personnel management programs or processes such as

staffing, employee development, retirement, and grievances and appeals.

(h) *Statistical records.* As used in this subpart, ''statistical records'' means records in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.

(i) *Routine use.* As used in this subpart, ''routine use'' means a use of a record for a purpose which is compatible with the purpose for which it was collected.

(j) *System notice.* As used in this subpart, ''system notice'' means the notice describing a system of records required by 5 U.S.C. 552a(e)(4) to be published annually in the FEDERAL REGISTER.

(k) *System manager.* As used in this subpart, ''system manager'' means the official designated in a system notice as having administrative responsibility for a system of records.

(l) *Commission Privacy Act Officer.* As used in the subpart, ''Commission Privacy Act Officer'' means the official in the Commission charged with responsibility for assisting the Commission in carrying out the functions which he is assigned in this subpart and for coordinating the activities of the divisions of the Commission in carrying out the functions which they are assigned in this subpart.

§ 700.259 Records subject to Privacy Act.

The Privacy Act applies to all ''records'' as that term is defined in § 700.257(d), which the Commission maintains in a ''system of records,'' as that term is defined in § 700.257(e).

§ 700.261 Standards for maintenance of records subject to the Act.

(a) *Content of records.* Records subject to the Privacy Act shall contain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order of the President.

(b) *Standards of accuracy.* Records subject to the Privacy Act which are used in making any determination about any individual shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making the determination.

(c) *Collection of information.* (1) Information which may be used in making determination about an individual's rights, benefits, and privileges under Federal programs shall, to the greatest extent practicable, be collected directly from that individual.

(2) In deciding whether collection of information from an individual, as opposed to a third party source, is practicable, the following factors, among others may be considered:

(i) Whether the nature of the information sought is such that it can only be obtained from a third party;

(ii) Whether the cost of collecting the information from the individual is unreasonable when compared with the cost of collecting it from a third party;

(iii) Whether there is a risk that information collected from third parties if inaccurate, could result in an adverse determination to the individual concerned;

(iv) Whether the information, if supplied by the individual, would have to be verified by a third party; or

(v) Whether provisions can be made for verification, by the individual, of information collected from third parties.

(d) *Advice to individual concerning uses of information.* (1) Each individual who is asked to supply information about himself which will be added to a system of records shall be informed of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information.

(2) At a minimum, the notice to the individual must state;

(i) The authority (whether granted by statute or Executive Order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(ii) The principal purpose or purposes for which the information is intended to be used;

(iii) The routine uses which may be made of the information; and

(iv) The effects on him, if any, of not providing all or any part of the requested information.

(3)(i) When information is collected on a standard form, the notice to the individual shall be on the form or on a tear-off sheet attached to the form or on a separate sheet, whichever is most practical.

(ii) When information is collected by an interviewer, the interviewer shall provide the individual with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests that a copy be mailed to him.

(iii) An individual may be asked to acknowledge, in writing, that he has been afforded the notice required by this section.

(e) *Records concerning activity protected by the First Amendment.* No record may be maintained describing how any individual exercises rights guaranteed by the First Amendment to the Constitution unless (1) expressly authorized by statute or by the individual about whom the record is maintained or (2) pertinent to and within the scope of an authorized law enforcement activity.

§ 700.263 Assuring integrity of records.

(a) *Statutory requirement.* The Privacy Act requires that records subject to the Act be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarassment, inconvenience, or unfairness to any individual on whom information is maintained, 5 U.S.C. 522a(e)(10).

(b) *Records maintained in manual form.* When maintained in manual form, records subject to the Privacy Act shall be maintained, at a minimum, subject to the following safeguards, or safeguards affording comparable protection:

(1) Areas in which the records are maintained or regularly used shall be posted with an appropriate warning stating that access to the records is limited to authorized persons. The warning shall also summarize the requirements of § 700.265 and state that the Privacy Act contains a criminal penalty for the unauthorized disclosure of records to which it applies.

(2) During working hours, (i) the area in which the records are maintained or regularly used shall be occupied by authorized personnel or (ii) access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(3) During non-working hours, access to the records shall be restricted by their storage in locked metal file cabinets or a locked room.

(c) *Records maintained in computerized form.* When maintained in computerized form, records subject to the Privacy Act shall be maintained, at a minimum, subject to safeguards based on those recommended in the National Bureau of Standards booklet ''Computer Security Guidelines for Implementing the Privacy Act of 1974'' (May 30, 1975), and any supplements thereto, which are adequate and appropriate to assuring the integrity of records in the system.

(d) *Civil Service Commission personnel records.* A system of records made up of Civil Service Commission personnel records shall be maintained under the security requirements set out in 5 CFR 293.108.

§ 700.265 Conduct of employees.

(a) *Handling of records subject to the Act.* Employees whose duties require handling of records subject to the Privacy Act shall, at all times, take care to protect the integrity, security and confidentiality of these records.

(b) *Disclosure of records.* No employee of the Commission may disclose records subject to the Privacy Act unless disclosure is permitted under § 700.267 or is to the individual to whom the record pertains.

(c) *Alteration of records.* No employee of the Commission may alter or destroy a record subject to the Privacy Act unless (1) such alteration or destruction is properly undertaken in the course of the employee's regular duties or (2) such alteration or destruction is required by a decision under §§ 700.287–

700.295 or the decision of a court of competent jurisdiction.

§ 700.267 Disclosure of records.

(a) *Prohibition of disclosure.* No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) *General exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) To those officers or employees of the Commission who have a need for the record in the performance of their duties; or

(2) Required by the Freedom of Information Act, 5 U.S.C. 522.

(c) *Specific exceptions.* The prohibition contained in paragraph (a) does not apply where disclosure of the record would be:

(1) For a routine use as defined in § 700.257(i) which has been described in a systems notice published in the FEDERAL REGISTER;

(2) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 U.S. Code.

(3) To a recipient who has provided the System Manager responsible for the system in which the record is maintained with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(4) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(5) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Department specifying the particular portion desired and the law enforcement activity for which the record is sought;

(6) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(7) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(8) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(9) Pursuant to the order of a court of competent jurisdiction.

(d) *Reviewing records prior to disclosure.* (1) Prior to any disclosure of a record about an individual, unless disclosure is required by the Freedom of Information Act, reasonable efforts shall be made to assure that the records are accurate, complete, timely and relevant for agency purposes.

(2) When a record is disclosed in connection with a Freedom of Information request made under subpart B of this part and it is appropriate and administratively feasible to do so, the requester shall be informed of any information known to the Commission indicating that the record may not be fully accurate, complete, or timely.

§ 700.269 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the specific exceptions provided by § 700.267(c), an accounting shall be made.

(2) The accounting shall record (i) the date, nature, and purpose of each disclosure of a record to any person or to another agency and (ii) the name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section shall be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accountings.* (1) Except for accountings of disclosures made under § 700.267(c)(5), accountings of all disclosures of a record shall be made available to the individual to whom the record relates at his request.

(2) An individual desiring access to accountings of disclosures of a record pertaining to him shall submit his request by following the procedures of § 700.277.

(c) *Notification of disclosure.* When a record is disclosed pursuant to § 700.267(c)(9) as the result of the order of a court of competent juridiction, reasonable efforts shall be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

§ 700.271 Requests for notification of existence of records: Submission.

(a) *Submission of requests.* (1)(i) An individual desiring to determine under the Privacy Act whether a system of records contains records pertaining to him shall address his inquiry to the system manager having responsibility for the system unless the system notice describing the system prescribes or permits submission to some other official or officials.

(ii) If a system notice describing a system requires that an individual contact more than two officials concerning the existence of records in the system, an individual desiring to determine whether the system contains records pertaining to him may contact the system manager for assistance in determining which official is most likely to be in possession of records pertaining to that individual.

(2) If an individual desires to determine whether records pertaining to him are maintained in two or more systems, he shall make a separate inquiry concerning each system.

(b) *Form of request.* (1) An inquiry to determine whether a system of records contains records pertaining to an individual shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend ''PRIVACY ACT INQUIRY.''

(3) The request shall state that the individual is seeking information concerning records pertaining to himself and shall supply such additional identifying information, if any, as is called for in the system notice describing the system.

(4) If an individual has reason to believe that information pertaining to him or her may be filed under a name other than the name he or she is currently using (e.g., a maiden name), he or she shall include this information in the request.

§ 700.273 Request for notification of existence of records: Action on.

(a) *Decisions on request.* (1) An individual inquiring to determine whether a system of records contains records pertaining to him shall be advised within ten (10) days (excepting Saturdays, Sundays and legal public holidays) whether or not the system does contain records pertaining to him unless (i) the records were compiled in reasonable anticipation of a civil action or proceeding or (ii) the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking.

(2) If the records were compiled in reasonable anticipation of a civil action or proceeding or the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking, the individual will be promptly notified that his is not entitled to notification of whether the system contains records pertaining to him.

(b) *Authority to deny requests.* A decision to deny a request for notification of the existence of records shall be made by the Privacy Act Officer.

(c) *Form of decision.* (1) No particular form is required for a decision informing an individual whether or not a system of records contains records pertaining to him.

(2) A decision declining to inform an individual whether or not a system of records contains records pertaining to him shall be in writing and shall state the basis for denial of the request and shall advise the individual that he may appeal the declination to the Executive Director pursuant to § 700.285 by writing to the Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona

86002, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

§ 700.275 Requests for access to records.

The Privacy Act permits an individual, upon his request, to gain access to his record or to any information pertaining to him which is contained in a system and to review the record and have a copy made of all or any portion thereof in a form comprehensive to him, 5 U.S.C. 552a(d)(1). A request for access shall be submitted in accordance with the procedures in this subpart.

§ 700.277 Requests for access to records: Submission.

(a) *Submission of requests.* (1) Requests for access to records shall be submitted to the system manager having responsibility for the system in which the records are maintained unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) If an individual desires access to records maintained in two or more separate systems, he shall submit a separate request for access to the records in each system.

(b) *Form of request.* (1) A request for access to records subject to the Privacy Act shall be in writing.

(2) To insure expeditious handling, the request shall be prominently marked, both on the envelope and on the face of the request, with the legend ''PRIVACY ACT REQUEST FOR ACCESS.''

(3) The request shall specify whether the requester seeks all of the records contained in the system which relate to him or only some portion thereof. If the requester seeks only a portion of the records which relate to him, the request shall reasonably describe the specific records sought.

(4) If the requester seeks to have copies of the requested records made, the request shall state the maximum amount of copying fees which the requester is willing to pay. A request which does not state the amount of fees the requester is willing to pay will be treated as a request to inspect the requested records. Requesters are further notified that under § 700.279(d) the failure to state willingness to pay fees as high as are anticipated by the Commission will delay processing of a request.

(5) The request shall supply such identifying information, if any, as is called for in the system notice describing the system.

(6) Requests failing to meet the requirements of this paragraph shall be returned to the requester with a written notice advising the request of the deficiency in the request.

§ 700.279 Requests for access to records: Initial decision.

(a) *Decisions on requests.* A request made under this subpart for access to a record shall be granted promptly unless (1) the record was compiled in reasonable anticipation of a civil action or proceeding or (2) the record is contained in a system of records which has been excepted from the access provisions of the Privacy Act by rulemaking.

(b) *Authority to deny requests.* A decision to deny a request for access under this subpart shall be made by the Privacy Act Officer.

(c) *Form of decision.* (1) No particular form is required for a decision granting access to a record. The decision shall, however, advise the individual requesting the record as to where and when the record is available for inspection or, as the case may be, where and when copies will be available. If fees are due under § 700.279(d), the individual requesting the record shall also be notified of the amount of fees due or, if the exact amount has not been determined, the approximate amount of fees due.

(2) A decision denying a request for access, in whole or part, shall be in writing and shall state the basis for denial of the request. The decision shall also contain a statement that the denial may be appealed to the Executive Director pursuant to § 700.281 by writing to Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal

holidays excepted) of the date of the decision.

(d) *Fees.* (1) No fees may be charged for the cost of searching for or reviewing a record in response to a request made under § 700.271.

(2) Fees for copying a record in response to a request made under § 700.271 shall be charged in accordance with the schedule of charges contained in the Commission's Management Manual, unless the official responsible for processing the request determines that, in his/her opinion, reduction or waiver of fees is appropriate.

(3) Where it is anticipated that fees chargeable in connection with a request will exceed the amount the person submitting the request has indicated he/she is willing to pay, the official processing the request shall notify the requester and shall not complete processing of the request until the requester has agreed, in writing, to pay fees as high as are anticipated.

§ 700.281 Requests for notification of existence of records and for access to records: Appeals.

(a) *Right of appeal.* If an individual has been notified that he/she is not entitled to notification of whether a system of records contains records pertaining to him or has been denied access, in whole or part, to a requested record that individual may appeal to the Executive Director.

(b) *Time for appeal.* (1) An appeal must be received by the Privacy Act Officer no later than twenty (20) days (Saturdays, Sundays and public legal holidays excepted) after the date of the initial decision on a request.

(2) The Executive Director may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the initial decision of the request.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial request and the decision on the request.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the initial request to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, Box KK, Flagstaff, Arizona 86002.

(d) *Action on appeals.* (1) Appeals from decisions on initial requests made pursuant to §§ 700.273 and 700.277 shall be decided for the Commission by the Executive Director after consultation with the Commission's legal counsel.

(2) The decision on an appeal shall be in writing and shall state the basis for the decision.

§ 700.283 Requests for access to records: Special situations.

(a) *Medical records.* (1) Medical records shall be disclosed to the individual to whom they pertain unless it is determined, in consultation with a medical doctor, that disclosure should be made to a medical doctor of the individual's choosing.

(2) If it is determined that disclosure of medical records directly to the individual to whom they pertain could have an adverse effect on that individual, the individual may designate a medical doctor to receive the records and the records will be disclosed to that doctor.

(b) *Inspection in presence of third party.* (1) An individual wishing to inspect records pertaining to him which have been opened for his inspection may, during the inspection, be accompanied by a person of his own choosing.

(2) When such a procedure is deemed appropriate, the individual to whom the records pertain may be required to furnish a written statement authorizing discussion of his record in the accompanying person's presence.

§ 700.285 Amendment of records.

The Privacy Act permits an individual to request amendment of a record pertaining to him if be believes the record is not accurate, relevant, timely or complete, 5 U.S.C. 552a(d)(2). A request for amendment of a record shall be submitted in accordance with the procedures in this subpart.

§ 700.287 Petitions for amendment: Submission and form.

(a) *Submission of petitions for amendment.* (1) A request for amendment of a

record shall be submitted to the system manager for the system of records containing the record unless the system notice describing the system prescribes or permits submission to a different official or officials. If an individual wishes to request amendment of records located in more than one system, a separate petition must be submitted to each system manager.

(2) A petition for amendment of a record may be submitted only if the individual submitting the petition has previously requested and been granted access to the record and has inspected or been given a copy of the record.

(b) *Form of petition.* (1) A petition for amendment shall be in writing and shall specifically identify the record whose amendment is sought.

(2) The petition shall state, in detail, the reasons why the petitioner believes the record, or the portion thereof objectionable to him, is not accurate, relevant, timely or complete. Copies of documents or evidence relied upon in support of these reasons shall be submitted with the petition.

(3) The petition shall state, specifically and in detail, the changes sought in the record. If the changes involve rewriting of the record or portions thereof or involve adding new language to the record, the petition shall propose specific language to implement the changes.

§ 700.289 Petitions for amendment: Processing and initial decision.

(a) *Decisions on petitions.* In reviewing a record in response to a petition for amendment, the accuracy, relevance, timeliness and completeness of the record shall be assessed against the criteria set out in § 700.261. In addition, personnel records shall be assessed against the criteria for determining record quality published in the Federal Personnel Manual and the Commission Manual addition thereto.

(b) *Authority to decide.* An initial decision on a petition for amendment may be made only by the Privacy Act Officer.

(c) *Acknowledgement of receipt.* Unless processing of a petition is completed within ten (10) days (Saturdays, Sundays and public legal holidays excepted), the receipt of the petition for amendment shall be acknowledged in writing by the system manager to whom it is directed.

(d) *Inadequate petitions.* (1) If a petition does not meet the requirements of § 700.287, the petitioner shall be so advised and shall be told what additional information must be submitted to meet the requirements of § 700.287.

(2) If the petitioner fails to submit the additional information within a reasonable time, his petition may be rejected. The rejection shall be in writing and shall meet the requirements of paragraph (e) of this section.

(e) *Form of decision.* (1) A decision on a petition for amendment shall be in writing and shall state concisely the basis for the decision.

(2) If the petitioned for amendment is rejected, in whole or part, the decision shall advise the petitioner that the rejection may be appealed to the Executive Director by writing to the Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, Box KK, Flagstaff, Arizona 86002, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

(f) *Implementation of initial decision.* If a petitioned for amendment is accepted, in whole or part, the appropriate Commission Division maintaining the record shall:

(1) Correct the record accordingly and,

(2) Where an accounting of disclosures has been made pursuant to § 700.269 advise all previous recipients of the record that the correction was made and the substance of the correction.

§ 700.291 Petitions for amendment: Time limits for processing.

(a) *Acknowledgement of receipt.* The acknowledgement of receipt of a petition required by § 700.289(c) shall be dispatched not later than ten (10) days (Saturdays, Sundays and public legal holidays excepted) after receipt of the petition by the system manager responsible for the system containing the challenged record, unless a decision on the petition has been previously dispatched.

(b) *Decision on petition.* A petition for amendment shall be processed promptly. A determination whether to accept or reject the petitioned for amendment shall be made within no more than thirty (30) days (Saturdays, Sundays, and public legal holidays excepted) after receipt of the petition by the system manager responsible for the system containing the challenged record.

(c) *Suspension of time limit.* The thirty (30) day time limit for a decision on a petition shall be suspended if it is necessary to notify the petitioner, pursuant to § 700.289(d) that additional information in support of the petition is required. Running of the thirty (30) day time limit shall resume on receipt of the additional information by the system manager responsible for the system containing the challenged record.

(d) *Extensions of time.* (1) The thirty (30) day time limit for a decision on a petition may be extended if the official responsible for making a decision on the petition determines that an extension is necessary for one of the following reasons:

(i) A decision on the petition requires analysis of voluminous record or records;

(ii) Some or all of the challenged records must be collected from facilities other than the facility at which the official responsible for making the decision is located.

(2) If the official responsible for making a decision on the petition determines that an extension is necessary, he shall promptly inform the petitioner of the extension and the date on which a decision is expected to be dispatched.

§ 700.293 Petitions for amendment: Appeals.

(a) *Right of appeal.* Where a petitioned-for amendment has been rejected, in whole or part, the individual submitting the petition may appeal the denial to the Executive Director.

(b) *Time for appeal.* (1) An appeal must be received no later than twenty (20) days (Saturdays, Sundays and public legal holidays excepted) after the date of the decision on a petition.

(2) The Executive Director may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision on a petition.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial petition and the decision on that petition.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the petition to have been in error.

(3) The appeal shall be addressed to Privacy Act Officer, Navajo and Hopi Indian Relocation Commission, Box KK, Flagstaff, Arizona 86002.

§ 700.295 Petitions for amendment: Action on appeals.

(a) *Authority.* Appeals from decisions on initial petitions for amendment shall be decided for the Commission by the Executive Director after consultation with the Commission's legal counsel unless the record challenged by the initial petition is a Civil Service Commission personnel record maintained for the Commission by the Navajo and Hopi Indian Relocation Commission. Appeals from decisions on initial petitions requesting amendment of Civil Service Commission records maintained for the Commission by the Navajo and Hopi Indian Relocation Commission shall be transmitted by the Executive Director, for decision.

(b) *Time limit.* (1) A final determination on any appeal shall be made within thirty (30) days (Saturdays, Sundays and legal public holidays excepted) after receipt of the appeal.

(2) The thirty (30) day period for decision on an appeal may be extended, for good cause shown, by the Commission. If the thirty (30) day period is extended, the individual submitting the appeal shall be notified of the extension and of the date on which a determination on the appeal is expected to be dispatched.

(c) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination.

(2) If the determination upholds, in whole or part, the initial decision rejecting the petitioned for amendment, the determination shall also advise the individual submitting the appeal:

(i) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the agency;

(ii) Of the procedure established by § 700.297 for the filing of the statement of disagreement;

(iii) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Commission, a brief statement by the Commission summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the challenged record will be provided a copy of any statement of dispute to the extent that an accounting of disclosure was maintained; and

(v) Of his or her right to seek judicial review of the Commission's refusal to amend the record.

(3) If the determination reverses, in whole or in part, the initial decision rejecting the petitioned for amendment, the system manager responsible for the system containing the challenged record shall be directed to:

(i) Amend the challenged record accordingly; and

(ii) If an accounting of disclosure has been made, advise all previous recipients of the record which was amended of the amendment and its substance.

§ 700.297 Statements of disagreement.

(a) *Filing of statements.* If the determination of the Executive Director under § 700.295 rejects in whole or part, a petitioned for amendment, the individual submitting the petition may file with the system manager for the system containing the challenged record, a concise written statement setting forth the reasons for his disagreement with the determination of the Department.

(b) *Disclosure of statements.* In any disclosure of a record containing information about which an individual has filed a statement of disagreement under this section occurring after the filing of the statement, the disputed portion of the record will be clearly noted and the recipient shall be provided copies of the statement of disagreement. If appropriate, a concise statement of the reasons of the Commission for not making the requested amendments may also be provided to recipient.

Subpart L—Determination of Eligibility, Hearing and Administrative Review (Appeals)

SOURCE: 46 FR 46801, Sept. 22, 1981; 47 FR 15774, Apr. 13, 1982, unless otherwise noted.

§ 700.301 Definitions.

(a) Certifying Officer, as used in this subpart, means that member of the Commission staff who certifies eligibility for relocation assistance benefits and/or for life estate leases.

(b) An aggrieved person, as used in this subpart, means a person who has been denied any relocation assistance benefits for which he/she has applied.

§ 700.303 Initial Commission determinations.

(a) Initial Commission Determination concerning individual eligibility or benefits for any person who has filed a claim for benefits or for granting of life estate leases shall be made by the Certifying Officer. The Determination shall include the amount, if any, to which the individual is entitled, and shall state the reasons therefor. Such Determination shall be communicated to the Applicant by certified letter or in person by Commission staff. A record of personal notice shall be maintained by the Commission.

(b) An explanatory conference shall be scheduled by and with the Certifying Officer, if requested by the Applicant or the Certifying Officer, within thirty days of the communication of the Determination; the right to a hearing is not dependent on the holding of such a conference. The Certifying Officer may reverse, amend, or leave standing the Initial Determination as a result of such conference: *Provided, however,* his/her decision shall be communicated in writing to the Applicant by certified letter or in person by Commission staff within five days after such conference.

(c) Communications of Determinations to the Applicant as provided for in § 700.303(a) shall include an explanation of the availability of grievance procedures, including hearings and representation of counsel and the fact

that a hearing must be requested within 30 (thirty) days of receipt of the determination.

(d) No decision which at the time of its rendition is subject to appeal to the Commission shall be considered final agency action subject to judicial review under 5 U.S.C. 704, *Provided* that in the event of a whole or partial denial, no benefits shall be paid unless and until said Determination is reversed or modified as provided for herein.

§ 700.305 Availability of hearings.

All persons aggrieved by Initial Commission Determinations concerning eligibility, benefits, or for granting of life estate leases may have a Hearing to present evidence and argument concerning the Determination. Parties seeking such relief from the Commission's Initial Determination shall be known as ''Applicants.'' When multiple Applicants claim interest in one benefit, determination, or question of eligibility, their hearings may be consolidated at the Presiding Officer's discretion.

§ 700.307 Request for hearings.

Hearing requests shall be made in person or by letter and must be received by the Commission within thirty days after the notice letter was received, the personal notice was given, or if an explanatory conference is held, after the decision of the Certifying Officer. The request shall also contain a specific statement indicating the basis for the request.

§ 700.309 Presiding officers.

The hearing shall be presided over and conducted by one of the Commissioners appointed pursuant to 25 U.S.C. 640d–11(b) or by such other person as the Commission may designate.

§ 700.311 Hearing scheduling and documents.

(a) Hearings shall be held as scheduled by the Presiding Officer.

(b) Notice of the hearing shall be communicated in writing to the applicant at least thirty days prior to the hearing and shall include the time, date, place, and nature of the hearing.

(c) Written notice of the Applicant's objections, if any, to the time, date, or place fixed for the hearing must be filed with the Presiding Officer at least five days before the date set for the hearing. Such notice of objections shall state the reasons therefor and suggested alternatives. Discretion as to any changes in the date, time, or place of the hearing lies entirely with the Presiding Officer, *Provided*, that the 30 (thirty) day notice period as provided in paragraph (b) of this section shall be observed unless waived in writing by the applicant or his representative.

(d) All hearings shall be held within thirty days after Commission receipt of the applicant's request therefor unless this limit is extended by the Presiding Officer.

(e) All hearings shall be conducted at the Commission office in Flagstaff, Arizona, unless otherwise designated by the Presiding Officer.

(f) All time periods in this regulation include Saturdays, Sundays and holidays. If any time period would end on a Saturday, Sunday, or holiday, it will be extended to the next consecutive day which is not a Saturday, Sunday, or holiday.

(g) A copy of each document filed in a proceeding under this section must be filed with the Commission and may be served by the filing party by mail on any other party or parties in the case. In all cases where a party is represented by an attorney or representative, such attorney or representative will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney or representative, which service shall suffice as if made upon the Applicant. Where a party is represented by more than one attorney or representative, service upon one of the attorneys or representatives shall be sufficient.

(h) Hearings will be recorded verbatim and transcripts thereof shall be made when requested by any parties; costs of transcripts shall be borne by the requesting parties unless waived according to § 700.313(a)(5).

(i) Applicants may be represented by a licensed attorney or by an advocate licensed to practice in any Hopi or Navajo Tribal Court.

§ 700.313 Evidence and procedure.

(a) At the hearing and taking of evidence the Applicant shall have an opportunity to:

(1) Submit and have considered facts, witnesses, arguments, offers of settlement, or proposals of adjustment;

(2) Be represented by a lawyer or other representative as provided herein;

(3) Have produced Commission evidence relative to the determination, *Provided,* that the scope of pre-hearing discovery of evidence shall be limited to relevant matters as determined by the Presiding Officer;

(4) Examine and cross-examine witnesses;

(5) Receive a transcript of the hearing on request and upon payment of appropriate Commission fees as published by the Commission, which may be waived in cases of indigency.

(b) The Presiding Officer is empowered to:

(1) Administer oaths and afffirmations;

(2) Rule on offers of proof;

(3) Receive relevant evidence;

(4) Take depositions or have depositions taken when the ends of justice would be served and to permit other pre-hearing discovery within his/her discretion;

(5) Regulate the course and conduct of the hearings; including pre-hearing procedures;

(6) Hold pre-hearing or post-hearing conferences for the settlement or simplification of the issues;

(7) Dispose of procedural requests or similar matters;

(8) Make a record of the proceedings;

(9) Hold the record open for submission of evidence no longer than fourteen days after completion of the hearings;

(10) Make or recommend a decision in the case based upon evidence, testimony, and argument presented;

(11) Enforce the provisions of 5 USCA section 557(d) in the event of a violation thereof;

(12) Issue subpoenas authorized by law; and

(13) Extend any time period of this subpart upon his/her own motion or upon motion of the applicant, for good cause shown.

§ 700.315 Post hearing briefs.

Applicants may submit post-hearing briefs or written comments to the Presiding Officer within fourteen days after conclusion of the hearings. In the event of multiple applicants or parties to a hearing, such briefs shall be served on all such applicants by the applicant submitting the brief.

§ 700.317 Presiding officer decisions.

(a) The Presiding Officer shall submit to the Commission a written decision based upon the evidence and argument presented, within *sixty* days, not including any period the record is held open, if any, after conclusion of the hearing, unless otherwise extended by the Presiding Officer.

(b) Copies of the Presiding Officer's decision shall be mailed to the Applicant. The Applicant may submit briefs or other written argument to the Commission within fourteen days of the date the Presiding Officer's determination was mailed to the Applicant.

§ 700.319 Final agency action.

Within 30 (thirty) days after receipt of the Presiding Officer's decision, the Commission shall affirm or reverse the decision and issue its final agency action upon the application in writing; *Provided,* that in the event one Commissioner sits as the Presiding Officer, the final agency action shall be determined by the remaining Commissioners and such other person as they may designate who did not so preside over the hearing. Such decisions shall be communicated in writing to the Applicant by certified mail.

§ 700.321 Direct appeal to Commissioners.

Commission determinations concerning issues other than individual eligibility or benefits which do not require a hearing may be appealed directly to the Commission in writing. The Commission decision will constitute final agency action on such issues.

Subpart M—Life Estate Leases

AUTHORITY: Sec. 30(b), Pub. L. 96–305, 94 Stat. 929 (25 U.S.C. 640d).

SOURCE: 46 FR 27921, May 22, 1981; 47 FR 15774, Apr. 13, 1982, unless otherwise noted.

§ 700.331 Application for life estate leases.

The following standards and procedures shall govern the application for life estate leases:

(a) *Filing of application.* Applications for life estate leases shall be filed at the Commission's office in Flagstaff, AZ, not later than July 1, 1981, unless extended for good cause. Application should be made on an approved Commission form known as ''Application for Life Estate Lease'' and should contain the following information:

(1) Name, address, birthdate, social security number, census number, spouse, and date of marriage, if married. The head of household who applies for a life estate lease shall be known as the ''applicant''.

(2) Applicant's Quad Map location in the Former Joint Use Area.

(3) Information listing any other places of Applicant's residence since December 22, 1974.

(4) Name, birthdate, census number, and social security number, if any, of the applicant's minor dependent children.

(5) A statement by the applicant setting forth the nature of the applicant's disability, if any.

(6) Applications should be accompanied, wherever possible, with documentation such as Birth Certificates, Baptismal Records, Tribal Records, Family Census Cards, Marriage Certificates, Tax Returns, and such other documentation required by the Commission.

(b) *Extensions of time for filing of applications for life estate leases.* Extensions of time for filing of applications for life estate leases shall be governed by the following procedures:

(1) The Commission shall, on a case-by-case basis, determine whether good cause exists to warrent a time extension for the receipt of applications.

(2) Initial Commission determinations concerning the time extension for receipt of applications shall be made by the Certification Officer. Any extensions granted shall be in writing and shall state the length of the extensions and the reasons therefore.

(3) In no event shall an extension be granted for more than eighty-nine (89) days after July 1, 1981.

(4) In the event an extension of time is denied or an application is refused for filing, the Certification Officer shall state the reasons therefore and such determination shall be communicated to the applicant by certified letter or in person by Commission staff.

(5) All persons aggrieved by initial Commission determination may have a hearing to present evidence and argument concerning the determination. Such hearings shall be requested and governed by the Commission's Hearings and Administrative Review Procedures contained in § 700.8 of the Commission's Operations and Relocation Procedures.

(6) For purpose of this subsection, ''good cause'' shall be defined as follows:

(i) Lack of actual notice.

(ii) Lack of transportation or physical incapacity preventing timely filing.

(iii) Acts of God.

(iv) Such other facts or reasons deemed sufficient in the discretion of the Commission.

§ 700.333 Determination of disability.

The Commission shall determine disability pursuant to the following:

(a) An applicant shall be considered to be disabled if he/she is unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. A physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(b) Each applicant who claims entitlement to a life estate lease by virture of a disability shall be examined by a physician selected by the Commission or one selected by the applicant and approved by the Commission. The reasonable costs of such examinations shall be paid by the Commission. The examining physician shall submit a report of his/her examination to the rating physician who shall be a physician

selected by the Commission. The rating physician shall submit to the Commission a report stating his/her opinion as to whether or not the applicant is a least 50% (fifty percent) disabled and if so, the percent of disability. In addition, the rating physician shall state in his/her report the conditions or conditions of the applicant upon which the rating is based.

(c) In performing examinations and in making ratings, the physician shall follow the procedures and adopt the standards set forth in Subpart I—Determination of Disability or Blindness, of the Social Security Administration, contained in title 20, Code of Federal Regulations, §§416.901 through 416.985, including the appendices, etc., to the extent that such procedures and standards are appropriate to this examination and rating.

(d) In making its determination as to the disability and the percentage thereof of an applicant who claims disability, the Commission shall consider the report of the rating physician and such other matters as the Commission deems relevant.

§ 700.335 Grouping and granting of applications for life estate leases.

Upon receipt of applications filed pursuant to this section, the Commission shall group and award life estate leases in the following manner:

(a) Applicants who are determined to be at least 50% (fifty percent) disabled as certified by a physician approved by the Commission. Such applicants shall be ranked in the order of the severity of their disability.

(b) Applicants who are not at least 50% (fifty percent) disabled shall be ranked in order of their age with the oldest listed first and the youngest listed last; provided that, if any applicant physically resides in Quarter Quad Numbers 78 NW, 77NE, 55SW, or 54 SE, as designated on the Quarter Quad Maps of the Former Joint Use Area prepared by the Bureau of Indian Affairs Field Administrative Office, such applicant shall be given priority over another applicant of equal age.

(c) Applicants who did not, as of December 22, 1974, and continuously thereafter, maintain a separate place of abode and actually remain domiciled on Hopi Partitioned Lands, and who, but for this subsection would be required to relocate, shall be rejected by the Commission.

(d) Applicants who were not at least forty-nine (49) years of age on December 22, 1974, *or* are not at least 50% (fifty percent) disabled shall also be rejected by the Commission.

(e) The Commission shall award life estate leases to not more than one hundred and twenty (120) Navajo applicants with first priority being given to applicants listed pursuant to § 700.335(a) and the next priority being given to applicants listed pursuant to § 700.335(b), in order of such listing.

(f) The Commission shall award life estate leases to not more than ten (10) Hopi applicants with first priority being given to applicants listed pursuant to § 700.335(a) and the next priority being given to applicants listed pursuant to § 700.335(b) in order of such listing except that the portion of § 700.335(b) concerning residency in Quarter Quad Numbers 78 NW, 77NE, 77NW, 55 SW, 54SE, etc., shall not apply to Hopi applicants.

§ 700.337 Establishment of boundaries of life estate leases.

(a) Prior to the issuance of a life estate lease, the Commission shall, after consultation with the Tribe upon whose land the life estate lease will be located, establish the actual configuration, shape and boundaries of the land area of the life estate lease. The present residence of the life tenant shall be within the boundaries of the life estate lease and the area of the life estate lease shall not exceed ninety (90) acres.

(b) The following factors will be considered in establishing the configuration, shape, and boundaries of a life estate lease:

(1) The location of the present residence of the applicant and the traditional land use area associated with such residence.

(2) The topography and soil conditions of the land in the immediate vicinity of the applicant's present residence.

(3) The location of the nearest source of water.

(4) The proximity of roads.

(5) Such other factors may be necessary or appropriate.

§ 700.339 Residency on life estate leases.

(a) No person may reside on a life estate lease other than the life tenant, his or her spouse, and minor dependents and such persons who are necessarily present, as determined by the Commission, to provide for the care of the life tenant.

(b) In determining who is necessarily present for the care of the life tenant, the Commission shall consider the following criteria:

(1) The age of the life tenant.

(2) The nature and extent of the life tenant's disability, if any.

(3) The location of the life estate lease, including but not limited to, the following factors:

(i) Topography,

(ii) Proximity to water,

(iii) Proximity to fuel,

(iv) Proximity to shopping and medical services, and

(v) Any other factors deemed relevant to the Commission.

(4) The nature and extent of care to be provided to a disabled life tenant.

(5) Any other factors deemed relevant by the Commission.

(c) In the event it becomes necessary to change the identity of the person(s) or number of persons identified as necessarily present for the care of the life tenant, the life tenant shall make such request for change to the Commission. The Commission, upon review of the request, may grant an amended life estate lease to reflect the requested change.

§ 700.341 Access to life estate leases.

(a) Family members and other persons may enter upon the life estate lease premises for the purpose of visiting the life estate lease residents so long as such visit does not exceed thirty (30) consecutive days in any one visit or ninety (90) days total of all visits within any lease year, except that grandchildren and their descendants who are not minor dependents of the life tenant and who have not attained the age of 18 (eighteen) years may visit for ninety (90) consecutive days in any lease year, the first of which shall commence on the date of issuance of the life estate lease. There shall be no limitation on visits which do not extend overnight.

(b) Visitors and residents shall use the existing road systems and access rights of way when traveling to and from life estate lease premises.

§ 700.343 Life estate leases.

The Commission shall execute a life estate lease to each applicant to whom a life estate lease is granted, which lease shall contain the following:

(a) The names of the persons entitled to reside on the life estate lease which shall be the life tenant, his or her spouse, and minor dependents and/or such persons who are necessarily present to provide for the care of life tenant.

(b) A description of the exterior boundaries of the land included in said lease.

(c) The term of the life estate lease which shall end either upon voluntary relinquishment or upon the death of the life tenant or his/her spouse, whichever occurs last.

(d) That the life tenant may feed not to exceed twenty-five (25) sheep units per year or equivalent livestock on the life estate lease premises.

(e) That no person may reside on a life estate lease other than the life tenant, his or her spouse, and minor dependents, and/or such persons who are necessarily present to provide for the care of the life tenant.

(f) That the Secretary of Interior shall pay, pursuant to 25 U.S.C. 640d–28(i), Pub. L. 96–305, section 30(i), on an annual basis, the fair market rental value of such life estate lease to the tribe to whom the lands leased were partitioned. Rental payments shall be made within thirty (30) days of the execution date of the life estate lease.

(g) That the life tenant may make reasonable improvements on the life estate lease which are related to the residence and agricultural purposes of the life tenancy as determined by the Commission. Such improvements:

(1) May include the renovation or replacement of existing dwelling structures and privies or outhouses so as to improve their utility, safety or level of modern utilities or amenities, but

(2) Shall not increase the number, size, or capacity of dwelling structures on the leased area except with the express written approval of the Commission based upon a showing of actual need, or to reasonably accommodate a resident care provider for whom there is not adequate existing residential capacity.

(3) May include not more than one shed or barn to be used in connection with livestock and/or agricultural activities permitted.

(4) May include one ceremonial hogan and one traditional ramada type structure.

(5) May include a garden of reasonable size.

(6) May include such other improvements as the Commission finds to be reasonable under the circumstances of each lease.

(h) That no person may visit on a life estate lease for more than thirty (30) consecutive days in any one visit or ninety (90) days total of all visits within any lease year the first of which shall commence on the date of issuance of the life estate lease, except that grandchildren and their descendants who are not minor dependents of the life tenant and who have not attained the age of eighteen (18) years may visit for ninety (90) consecutive days in any lease year. There shall be no limitation on visits which do not extend overnight.

(i) That said life tenant or his or her surviving spouse may relinquish said life estate lease at any time and may receive relocation benefits from the Secretary at the time of relinquishment as provided in 25 U.S.C. 640d–28(h), (Pub. L. 96–305, section 30(h)).

(j) The purposes for which the life estate lease may be used.

(k) The life estate tenure shall end by voluntary relinquishment, or at the death of the life tenant or the death of his or her spouse, whichever occurs last, all as provided in 25 U.S.C. 640d–28(g) (Pub. L. 96–305, section 30(g)).

(l) No livestock shall be allowed in the lease area until the perimeter of the lease area is fenced.

(m) Such other terms and conditions deemed necessary or appropriate by the Commission.

Subpart N—Discretionary Funds

SOURCE: 47 FR 57916, Dec 29, 1982, unless otherwise noted.

§ 700.451 Purpose.

(a) The purpose of this subpart is to establish procedures for the submission, review and approval, and administration of applications for financial assistance from the discretionary fund established by Pub. L. 93–531, as amended.

(b) The purpose of the discretionary fund is to provide financial assistance to activities which will facilitate and expedite the relocation and resettlement of individuals under the Act and ease the hardship incurred by these individuals.

§ 700.453 Definitions.

(a) *Act* means Pub. L. 93–531 (88 Stat. 1712, 25 U.S.C. 640d), as amended.

(b) *Applicant* means with respect to this subpart, any applicant as defined under § 700.457(c) or § 700.459(b).

(c) *Business* means any lawful activity, except a nonprofit organization, that is—

(1) Conducted primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Conducted primarily for the sale of services to the public.

(d) *Commissioners* means the three Commissioners of the Navajo and Hopi Indian Relocation Commission.

(e) *In-kind contribution* means a noncash contribution as described in attachment F of OMB Circular A–102.

(f) *Local government* means a local unit of government including specifically a county, municipality, city, town, township, local public authority, special district, council of governments, and other regional or interstate entity, or any agency or instrumentality of a local government.

(g) *Nonprofit organization* means a corporation, partnership, individual, or other public or private entity that is engaged in a lawful business, professional, or instructional activity on a

nonprofit basis and that has established its nonprofit status under applicable Federal, State, or Tribal law.

(h) *Related facilities* means any building or structure normally found in a community and includes but is not limited to water, sewer and electrical lines, community centers, health centers and clinics, roads, and business establishments.

(i) *Services* means activities relating to human development including, but not limited to, educational and job training, mental health counseling, health care, and technical assistance in business administration, agriculture, and home economics.

(j) *Tribe* means the Navajo Chapter or the Hopi Village.

(k) *Tribal subdivision* means a Navajo Chapter or a Hopi Village.

§ 700.455 Financial assistance.

(a) The Commission may provide financial assistance to applicants eligible under this subpart from funds available for any fiscal year.

(b) To obtain financial assistance, an applicant shall submit an application in accordance with § 700.463.

(c) The Commission may make funding decisions throughout the year as applications are approved. The Commission shall, to the extent possible, make funds available throughout the year for approved applications. Based upon the merit of applications received under this subpart, the Commission shall determine how funds available under this subpart shall be apportioned among the activities described in §§ 700.457 and 700.459.

§ 700.457 Assistance to match or pay 30% of grants, contracts or other expenditures.

(a) The purpose of applications for financial assistance under this section shall be to aid individuals subject to relocation under the Act and to assist the host communities, towns, cities, or other entities in adjusting to and meeting the needs of the relocatees. For this purpose, the discretionary fund may be used to match or pay not to exceed 30% (thirty percent) of any grant, contract, or other expenditure of the Federal Government, State or local government, tribal government or chapter, or private organization for the benefit of the Navajo or Hopi Tribe, if the Commission determines that such grant, contract, or expenditure would significantly assist the Commission in carrying out its responsibility or assist either tribe in meeting the burdens imposed by this Act.

(b) An ''other expenditure'' under this subsection is defined as cooperative agreements, direct provision of services, or in-kind contributions. The Commission may match or pay not to exceed 30% (thirty percent) of another expenditure through a grant, contract, or cooperative agreement.

(c) Eligible applicants under this section for a grant, contract, or cooperative agreement are defined as States, local government, the Navajo and Hopi Tribes, tribal chapters or villages and profit and nonprofit organizations.

(d) Total Federal financial assistance under this section may reach 100% (one hundred percent) if the applicant receives 70% (seventy percent) Federal funding from Federal agencies other than the Commission.

(e) When another Federal agency is a primary source of financial assistance for an applicant, the Commission may, pursuant to an interagency agreement, transfer funds to the primary Federal agency providing financial assistance to the applicant.

(f) The Commission may, pursuant to an interagency agreement, transfer not to exceed 10% (ten percent) of the funds available under this subpart to another Federal agency directly assisting relocatees if such agency's activities would accomplish the purpose of paragraph (a) of this section. Financial assistance transferred to accomplish an eligible activity under paragraph (a) of this section may not exceed the funding limitation of paragraph (a) of this section.

(g) An applicant may apply for financial assistance under this section in accordance with the funding limitations described in paragraph (a) for the purpose of undertaking a technical feasibility study of a construction project or any major project with a total funding of over $200,000 (two hundred thousand dollars) or any dollar amount which the Commission may prescribe at some future time.

§ 700.459 Assistance for demonstration projects and for provision of related facilities and services.

(a) The purpose of applications for financial assistance under this section shall be to aid individuals subject to relocation under the Act. For this purpose, the discretionary fund may be used by the Commission to engage or participate either directly through Federal activities, or by cooperative agreement, grant, or contract in demonstration efforts to employ innovative energy or other technologies in providing housing and related facilities and services in the relocation and resettlement of individuals under this Act.

(b) Applicants eligible under this section to receive grants, cooperative agreements or contracts are: states, local governments, the Navajo and Hopi Tribes, tribal chapters, profit and nonprofit organizations, and individuals.

(c) Applicants for assistance under this section may receive up to 100% (one hundred percent) project or program funding from the Commission, however, the Commission may specify whether applications for certain types of programs or projects under this section require matching funding from the applicant.

(d) Activities described in § 700.457(a) and paragraph (a) of this section may be provided by the Commission through in-house activities which receive financial assistance under this section.

(e) The Commission may, pursuant to an interagency agreement, transfer not to exceed 10% (ten percent) of the funds available under this subpart to another Federal agency directly assisting relocatees if such agency's activities would accomplish the purpose of §§ 700.457(a) and 700.459(a).

(f) An applicant may apply for financial assistance under this section for the purpose of undertaking a technical feasibility study of a construction project, or any major project with a total planned funding of over $200,000, (two hundred thousand dollars) or any dollar amount which the Commission may prescribe at some future time.

§ 700.461 Method for soliciting applications.

(a) The Commission shall utilize two methods to solicit applications for funding:

(1) The Commission shall issue an annual announcement of the availability of funds for programs which will most effectively meet the purposes of § 700.457(a) or 700.459(a). Applicants submitting applications under this announcement must demonstrate that the proposed project or program will effectively facilitate and expedite the relocation effort of the Commission.

(2) As priority needs are identified by the Commission, calls shall be issued during the fiscal year for specific proposals. Requests for proposal shall define the need to be addressed and the scope of work required.

(b) The annual announcements of the availability of funds and periodic requests for proposals shall be issued through the Commerce Business Daily and media which has regional and local circulation. The Commission may fund approved applications through grant, contract, or direct provision of services, pursuant to Pub. L. 93–531, as amended.

§ 700.463 Requirements for applications.

(a) Applicants shall submit preapplications for funding assistance. The preapplication shall be due by the closing date published by the Commission, and shall consist of:

(1) Standard Form 424;

(2) A brief narrative not to exceed one page describing how the program or project will meet the priorities established by the Commission pursuant to § 700.457 or § 700.459.

(b) The Commission shall respond to each preapplication, and shall request each person submitting an acceptable preapplication to submit an application.

(c) Applications for financial assistance for a project or program may be submitted by the due date established by the Commission for a particular funding cycle. Applications received after the due date will be considered for the next funding cycle, although the Commission, at its discretion, may select such a project for funding under

the current cycle. An original and 5 (five) copies of each application must be submitted to the Commission. Applications shall be submitted on such forms as the Commission may prescribe in conformity with OMB circulars A102 or A110.

(d) Applications under § 700.457 for matching financial assistance not to exceed 30% of another expenditure, shall include:

(1) A detail sheet showing the sources of matching funds, including both cash and in-kind contributions, and documentation that the applicant has fulfilled all of the requirements of any Federal agency, state or local government or chapter, or private organization from which the financial assistance is also requested; and

(2) A narrative statement which includes an explanation of how the application would aid relocatees and assist the host communities, towns, cities, or other entities in adjusting to and meeting the needs of relocatees.

(e) Applications for financial assistance under § 700.459 must justify the proposed project or program as a demonstration effort in order to be eligible for 100% funding.

(f) Applications shall contain a statement of how the applicant plans to comply with the provisions of the Indian Self-Determination Act (25 U.S.C. 450e) and the Act of April 16, 1934 (48 Stat. 596) as amended (25 U.S.C. 452–457).

§ 700.465 Technical feasibility.

Unless required by a non-Commission source of financial assistance, completed plans and specifications are not required at the time an application is submitted for construction, technology, or another engineering project, however, an application for a construction, technology or another engineering project shall:

(a) Include sufficient information to determine the nature and scope of the project, its probable useful life, and a reasonable estimate of cost;

(b) Fully show that the applicant will follow design and performance criteria which conform to professionally recognized standards and which adequately define the technical capability of the project to serve current and foreseeable needs; and

(c) Justify any evidence or use of unorthodox design.

(d) Show that the applicant has a management plan for the facility which identifies probable sources of operating funds.

(e) An applicant who is awarded a grant under § 700.465 is required to submit completed plans and specifications for the construction, technology, or other engineering project prior to construction. The Commission shall review the completed plans and specifications for technical adequacy as part of its oversight function.

§ 700.467 Construction costs.

Construction costs and costs relating to construction such as machinery and equipment, architect/engineer services, and administrative services may be allowable as determined by the Commission.

§ 700.469 Unallowable program and project costs.

Costs for program or project operating expenses are not allowable except in the following cases—

(a) An application for an annual contract for services under § 700.457 or 700.459 may include necessary operating expenses; and

(b) An application for a demonstration effort under § 700.459 may include costs relating to the operation of the demonstration.

§ 700.471 Review and approval.

(a) Upon receipt of an application for financial assistance under this subpart, members of the Commission staff shall begin a preliminary review of the application with the intent of submitting a recommendation to the Commissioners of whether to accept or deny the application. The Commission staff may inform the applicant before its recommendation to the Commissioners, of any special problems or impediments which may result in a recommendation for disapproval; may offer any available technical assistance required to overcome such problems or impediments; and solicit the applicants written response.

(b) The Commission staff may solicit comments on an application from technical specialists, community groups and others, when such advice is needed to fully evaluate the application.

(c) The Commission staff shall forward the application with their recommendation to the Commissioners. The Commissioners may approve applications if they determine that:

(1) The application meets the requirements of this subpart;

(2) The application meets the intent of the Act;

(3) The application fully demonstrates that it will expedite the relocation and resettlement of individuals under the Act and ease the hardship incurred by these individuals or by the Tribes;

(4) The application is compatible with priorities identified by the Commission;

(5) The applicant can carry out the activities described in the application and can maintain proper financial controls on the activities for which financial assistance is requested;

(6) The applicant can and will comply with requirements for Indian preference in employment and training in connection with the administration of the grant, and preference to Indian organizations and Indian owned economic enterprises in the award of subcontracts or subgrants; and

(7) Funds are available.

(d) All applicants shall be notified in writing of the Commission's approval or disapproval of the grant applications.

§ 700.473 Administrative expenditures of the Commission.

The Commission may use funds in an amount not to exceed 5 percent of the funds authorized under this subpart for expenses relating to the administration of the discretionary fund including—

(a) Personnel, whose time is expended directly in support of such administration;

(b) Supplies which are expended directly in support of such administration;

(c) Contracts, where the work performed is directly related to such administration;

(d) Printing, directly in support of such administration; and

(e) Travel, directly related to such administration.

§ 700.475 Reports.

Reports shall be furnished by any recipient of financial assistance under this subpart, in such manner as may be required by the Commission.

§ 700.477 Administration of financial assistance and recordkeeping requirements.

(a) A State or local government (except an institution of higher education or a hospital since they are governed by paragraph (b) of this section), or the Navajo or Hopi Tribe receiving a grant or cooperative agreement under this subpart shall comply with applicable law including the following requirements—

(1) Office of Management and Budget Circular A–102, entitled ''Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments'' including attachment C describing recordkeeping requirements; and

(2) Federal Management Circular 74–4 5 CFR part 1310, entitled ''Cost Principles Applicable to Grants and Contracts with State and Local Governments.''

(b) A nonprofit organization, institution of higher education, or hospital receiving a grant or cooperative agreement under this subpart shall comply with applicable law including the following requirements—

(1) Office of Management and Budget Circular A–110, entitled ''Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations'' including attachment C describing recordkeeping requirements; and

(2) Office of Management and Budget Circular A–122, entitled ''Cost Principles for Nonprofit Organizations.''

(c) A profit organization receiving a grant or cooperative agreement under this subpart shall comply with applicable law including Federal Procurement Regulations (41 CFR subpart 1–15.2) for determining the reasonableness, allowability, and allocability of costs.

(d) A profit organization, tribal chapter, or individual receiving a grant or cooperative agreement under this subpart shall—

(1) Follow sound and proper procedures for the administration of the financial assistance including any procedures established by the Commission; and

(2) Retain records as required by the Commission.

(e) A State, local government, the Navajo or Hopi Tribe, a tribal chapter or an individual receiving a contract under this subpart shall comply with applicable law including Federal Procurement Regulations (41 CFR parts 1–1 through 1–30). Recordkeeping requirements for contracts are described in §§ 1–3.814–2, 1–7.103–3, 1–7.103–18, 1–7.603–20, and 1–7.603–7 of the Federal Procurement Regulations.

(f) A State, local government, profit or nonprofit organization, or an individual residing off of the Navajo or Hopi reservation applying for a grant or cooperative agreement under this subpart shall comply with Office of Management and Budget Circular A–95, entitled ''Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects'' unless exempted under Part I, section 8.b. of this circular.

(g) Recipients of financial assistance under this subpart shall comply with other procedures which the Commission may from time to time prescribe for the administration of financial assistance provided under this subpart.

(h) A state or local government, nonprofit organization, institution of higher education, hospital, profit organization or individual receiving a grant, subgrant, contract or subcontract under this part shall comply with the provisions of the Indian Self-Determination Act (25 U.S.C. 450e) and the Act of April 16, 1934 (48 Stat. 596) as amended (25 U.S.C. 452–457) which require that to the greatest extent feasible:

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organization and to Indian owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) (25 U.S.C. 1452).

§ 700.479 Administrative review.

(a) If the Commissioners determine that implementation of an application approved according to § 700.471 fails to meet the requirements of this subpart, the Commissioners shall give notice to the recipient of their intent to terminate or suspend financial assistance to the recipient.

(b) The Commission shall issue such notice in written form sent by registered mail, return receipt requested, which notice shall include a statement of the reasons for the findings referred to in paragraph (a) of this section, and an explanation whether any amendments or actions would result in compliance with grant terms and conditions.

(c) Any person whose approved financial assistance is terminated or suspended under paragraph (b) of this section may request a review of such action by the Commission. Such request for review shall be in writing and must be mailed or delivered to the Commission not later than thirty (30) days after receipt of the notice from the Commission by the applicant. Such request for review shall state the reasons for the request and shall include any additional matters not before the Commission which the applicant deems appropriate. The Commission may grant or deny a review at its discretion and shall inform the applicant of its decision in writing.

Subpart O—Employee Responsibility and Conduct

SOURCE: 47 FR 11858, Mar. 19, 1982, unless otherwise noted.

§ 700.501 Statement of purpose.

This part prescribes appropriate standards of conduct and responsibilites, financial disclosure reports, and rules of ethics in the conduct of Government business that are mandatory for all who serve with the Navajo and Hopi Indian Relocation

Commission, and in order to implement the requirements of law, Executive Order 11222 and 5 CFR part 905. The rules promulgated by the Commission as essential to agency operations are in addition to the criminal laws and other laws governing conduct of Federal employees. Like the laws, they will be strictly interpreted and firmly enforced. Ignorance of these rules or laxity in observance or enforcement of them will not be condoned. They are the prime responsibility of all Commission personnel.

§ 700.503 Definitions.

(a) ''Special Government Employee'': An officer or employee who has been employed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis (18 U.S.C. 202(a)).

(b) ''Employee'': Any officer or employee of the Commission who is not a special government employee.

(c) ''Commission personnel'': All officers and employees of the Commission, including special Government employees.

(d) ''Persons'': An individual, corporation, company, association, firm, partnership, society, joint stock company, or any other organization or institution.

(e) ''Gratuity'': Any gift, honorarium, favor, entertainment, hospitality, transportation, loan, or any other tangible thing, and any other intangible benefit (i.e. discounts) given to or on behalf of Commission employees or their spouses or dependent children for which fair market value is not paid by the recipient or by the Government.

§ 700.505 Coverage.

The regulations contained in this part apply to all Commission personnel. Exceptions applicable to special Government employees and members of the Senior Executive Service are noted in the body of this part.

§ 700.507 Responsibilities.

(a) *Office of the Commission and Office of Executive Direction.* (1) The Chairman of the Commission shall prepare and submit to the Office of Personnel Management for approval, standards of employee conduct which implement requirements of law, Executive Order 11222 and provisions of 5 CFR part 905; and prescribe additional standards of ethical and other conduct and reporting requirements that are appropriate to the agency. After OPM approval, the Chairman shall submit the agency's regulations to the FEDERAL REGISTER for publication. These requirements also apply to any amendments to agency regulations.

(2) The Commissioners shall appoint a Designated Agency Ethics Official and Deputy Ethics Official in accordance with 5 CFR 738.202(b). Responsibilities of these officials are described below in § 735.15.

(3) The Executive Director shall ensure that the regulations published under this part are disseminated to all Commission personnel and that staff are familiar with and understand the standards of conduct and statutes governing conflicts of interest and post Federal employment restrictions.

(4) The Executive Director shall ensure that disciplinary or remedial action is taken in the case of all agency personnel who violate these standards or related laws and regulations, and against supervisors who fail to carry out their responsibilities in taking disciplinary or remedial action in such cases.

(b) *Managers and supervisors.* Managers and supervisors shall ensure that all Commission personnel under their supervision are familiar with and understand these regulations governing standards of conduct, conflict of interest, and referenced statutory restrictions, and adhere to them at all times. Issues and problems which cannot be resolved through the discussion process inherent in the supervisor-employee relationship shall be referred to the Designated Agency Ethics Official. Managers and supervisors shall ensure that disciplinary or remedial action is taken with all agency personnel who violate these regulations, and against subordinate supervisors who fail to carry out their responsibilities for effecting or recommending disciplinary or remedial action in these cases.

(c) *Employees.* All Commission personnel shall be familiar with the standards of conduct governed in this directive and the laws governing conflicts of interest and post employment restrictions, and shall comply with them. When in doubt as to the permissibility of an action under the terms of this directive, the employee shall not act without first consulting the immediate supervisor and as appropriate seeking the advice of the Designated Agency Ethics Official.

(d) *Office of Management Operations.* (1) The Office of Management Operations shall give each employee a copy of these regulations and shall conduct an oral briefing on their contents, within 30 days of approval. New personnel shall receive a copy and oral briefing promptly upon assuming their duties. Additions and amendments shall be similarly communicated upon approval.

(2) The Office shall conduct annual review sessions of these standards for all personnel.

(3) The Office shall provide the Designated Agency Ethics Official with necessary administrative and clerical staff support.

§ 700.509 Duties of the designated agency ethics official.

The Designated Agency Ethics Official shall coordinate and manage the agency's ethics program. The Deputy Ethics Official shall serve as alternate Agency Ethics Official in the absence of the Designated Agency Ethics Official, or upon his or her express delegation. Specific duties of the Officer include:

(a) *Liaison with Office of Government Ethics (OGE).* The Designated Agency Ethics Official shall establish and maintain close working relations with the OGE, and shall coordinate communications between the Commission and OGE through the Agency Liaison Division and Office of Ethics of the General Services Administration. If the Designated Agency Ethics Official receives a request which he or she believes should be answered by the Office of Government Ethics, a referral procedure is available. Requests for advisory opinions shall be submitted as specified in 5 CFR 738.304. The Designated Agency Ethics Official shall provide the OGE with records, reports and any other information which may be required under the Ethics in Government Act (Pub. L. 95–521, as amended) or requested by the OGE.

(b) *Review of statements.* The Designated Agency Ethics Official shall review the statements of employment and financial interest submitted by agency personnel assessing the application of conflict of interest laws and regulations to the information reported. When the review discloses a conflict, or the appearance of a conflict, between the private interests of an employee and the performance of his or her duties as a Commission employee, the Designated Agency Ethics Official shall bring the conflict to the attention of the employee, grant the individual an opportunity to explain the conflict, and attempt to resolve it. If the conflict is not resolved at this point, the Designated Agency Ethics Official shall forward a written report on the conflict to the Chairman of the Commission recommending appropriate action. In developing the recommendation the Designated Agency Ethics Official may consult, as appropriate, with the agency General Counsel and the GSA Ethics Office.

(c) *Education and counseling program.* The Designated Agency Ethics Official shall design and conduct an education and counseling program for supervisors and employees on all ethics and standards of conduct matters, including post-employment matters. Records shall be kept as appropriate on the advice rendered.

(d) *Administrative systems review.* The Designated Agency Ethics Official shall ensure that these regulations and implementing administrative systems are evaluated annually to determine their adequacy and effectiveness in relation to current agency responsibilities. Amendments shall be developed and approved pursuant to the results of systems review.

§ 700.511 Statements of employment and financial interests.

(a) *Employees required to file statements.* (1) Members of the Commission shall submit Financial Disclosure Reports (SF–278) to the Deputy Ethics

Counselor of the Department of Interior, according to instructions received from that office. Issues of real or apparent conflict of interest which involve employees of the Senior Executive Service shall be resolved by the Ethics Officer of the Department of the Interior.

(2) The Designated Agency Ethics Official shall submit SF–278 to the Office of Government Ethics for review.

(3) The employee appointed as Deputy Ethics Official and incumbents of the positions listed below shall file NHIRC form 738.1F with the Designated Agency Ethics Official:

(i) Executive Director.

(ii) General Counsel.

(iii) Assistant Director for Management Operations.

(iv) Assistant Director for Relocation Operations.

(v) Chief, Technical Services Division.

(vi) Chief, Realty Division.

(vii) Chief, Advisory Services Division.

(viii) Chief, Office of Research, Planning and Evaluation.

(ix) Procurement/Fiscal Officer.

(x) Realty Specialists.

(xi) Construction Inspectors.

(4) The Designated Agency Ethics Official may require Statements of Employment and Financial Interest from employees in other specified positions, if analysis of duties and responsibilities shows the positions meet the criteria listed in paragraph (b) of this section.

(5) Special Government Employees shall file NHIRC form 738.2F with the Designated Agency Ethics Official prior to beginning employment or service with the Commission. The Designated Agency Ethics Official may waive this requirement if the duties of the position held by the special Government employee are of a nature or at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Commission or the Government.

(b) *Criteria for selection of positions subject to filing requirements.* The following criteria govern selection of employees who must also file statements of Employment and Financial Interest (NHIRC Form 738.1F) with the Designated Agency Ethics Official.

(1) Statements of Employment and Financial Interest shall be required of employees holding positions which are responsible for:

(i) Contracting or procurement.

(ii) Administering or monitoring grants and subcontracts.

(iii) Other activities where the decision or action has an economic impact on the interests of any person or non-Federal enterprise.

(2) When a new position is established or the duties of an existing position are materially changed, the position shall be evaluated pursuant to the criteria of this section to determine whether or not it should be designated as one requiring the incumbent to submit a Statement of Employment and Financial Interests.

(c) *Interests of relatives.* The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. Reports must include but are not limited to identification of such an individual's employer, financial holdings and debts. These provisions also apply to special Government employees.

(d) *Employee complaint against filing requirements.* An employee who believes that his or her position has been improperly included among those requiring the submission of a Statement of Employment and Financial Interests may obtain review through the Commission's administrative grievance procedure.

(e) *Procedures for obtaining statements.* Following approval of these regulations, the Designated Agency Ethics Official shall give each employee and special Government employee required to file under this part, a copy of the appropriate NHIRC form. An enclosure with the form shall advise that:

(1) The completed form shall be returned in a sealed envelope marked ''personal-in confidence'' to the Designated Agency Ethics Official within 30 days.

(2) The services of the Designated Agency Ethics Official are available to assist and advise in preparation of the statement.

(3) Any additions or deletions to the information furnished must be reported within 30 days of the time they occur, or in the case of a special Government employee, at the time the change occurs, and

(4) No later than June 1 of each year all employees and special Government employees required to file under paragraph (a)(3) of this section shall file an annual supplementary statement to update the information previously filed.

(5) New employees required to file under paragraph (a)(3) of this section shall submit a statement within 30 days of beginning employment with the Commission.

(e) *Confidentiality of statements.* Statements of employment and financial interest shall be held in confidence. Access to information from the statements shall not be disclosed except to carry out the purpose of this directive.

(f) *Resolving conflicts of interest.* When the Designated Agency Ethics Official determines from review of the statement that a conflict of interest may exist, the submitter shall have the opportunity to provide additional information, which shall become part of the record. The Designated Agency Ethics Official and the concerned employee shall make every effort to resolve the conflict in a manner that is mutually acceptable. If these efforts are not successful the Designated Agency Ethics Official shall forward a report and recommendation to the Chairman of the Commission for final action. Remedial action directed by the Chairman may include but is not limited to:

(1) Disqualification for a particular assignment.

(2) Change in assigned duties.

(3) Divestment of the employee or special Government employee of the conflicting interests.

(4) Disciplinary action, including removal.

§ 700.513 Business dealings on behalf of the government.

(a) All employees shall conduct themselves on the job so as to efficiently discharge the work of the Commission. Employees shall observe courtesy, consideration and promptness in dealing with clients, other governmental agencies, and members of the public.

(b) Commission personnel conducting business with contractors, realtors, vendors, service providers and other public and private agencies, organizations, business and individuals shall maintain strict impartiality in their business dealings. Commission employees shall not allow themselves to be placed in a position in which a conflict of interest might arise or might justifiably be suspected. Such a conflict may arise or appear to arise by the acceptance of gratuities or by any action which could reasonably be interpreted as influencing the strict impartiality that must prevail in all business relationships involving the Commission. However, this requirement of impartiality is not intended to prohibit advocacy of client interests, as is required as a stated duty of certain agency positions. Such advocacy may occur for example during warrantee representation or during technical representation with builders.

§ 700.515 Conflicts of interest.

(a) A conflict of interest may exist when an employee uses, or appears to use, his or her official position to obtain benefits for himself or herself, close friends, relatives, or business associates. A conflict of interest may also exist if an employee's private activities interfere with the proper discharge of his or her official duties. If an employee has any doubt about whether or not a particular situation is, or gives the appearance of being a conflict of interest, the situation should be discussed with the immediate supervisor. Should further review be required, the Designated Agency Ethics Official shall be consulted.

(b) Principal situations where conflict of interest may develop are regulated by the sections which follow. However, these regulations do not preclude other conflict of interest situations which may arise in connection with the work of the Commission.

(c) These prohibitions apply to all Commission employees, whether or not they are required to file financial and employment disclosure statements.

§ 700.517 Affiliations and financial interests.

(a) Commission personnel shall not engage in any personal, business, or professional activity, or receive or retain any direct or indirect financial interest, which places them in a position of conflict or apparent conflict between their private interests and the public interests of the United States as related to the duties of their Commission positions.

(b) Employees are prohibited from accepting money, goods or services other than official compensation for any act performed by the employee as part of his or her official duties.

(c) Commission personnel shall not use, directly or indirectly, inside information for private gain for themselves, family members, or others if that information is not generally available to the public and was obtained as a result of Commission employment.

(d) Commission personnel are prohibited from using their official positions to induce, coerce, or in any manner influence any person, including subordinates, to provide any improper benefit, financial or otherwise, to themselves or others.

(e) Employees may not have any personal interest in transactions which are directed, regulated, or effected by the Commission pursuant to the authorities vested in the agency by Pub. L. 93–531 and Pub. L. 96–395. Specifically:

(1) No Commission employee shall have a personal interest in a contract, subcontract, memorandum of understanding or agreement, or other arrangement resulting in payment for the delivery of goods, services, or supplies to the Commission, to the Navajo or Hopi tribal governments, or to individual relocatees or groups of relocatees.

(2) No Commission employee shall have or seek an interest in real or personal property acquired for transfer to the Navajo or Hopi Tribes.

(3) No Commission employee shall have or seek an interest in any activity supported financially by the Commission through the award of Discretionary Funds.

(4) During the process of acquiring replacement housing for relocatees no employee may have a personal interest in the activities of a contractor, realtor, or other business entity selected by the relocatee to furnish replacement housing; nor may the employee influence the relocatee to select any realtor, contractor or other business entity with which the employee has personal or business affiliations.

(5) Nothing in this section shall restrict a relocatee's right to exercise free and independent judgment in selecting a realtor, contractor, or other vendor or service provider; regardless of any personal or business relationship of that entity to a Commission employee, provided the employee has not influenced the choice of the relocatee in any manner.

(6) Nothing in this section shall restrict a Commission employee who is eligible for relocation benefits from applying for and obtaining such benefits according to published criteria; nor to prevent the Commission from employing a member of the Hopi or Navajo Tribe who has been, or is in the process, of being relocated pursuant to the law.

(7) Commission employees shall disqualify themselves from investigating and preparing recommendations regarding eligibility determination for applicants to whom they are closely related by blood or marriage.

§ 700.519 Gifts, entertainment and favors.

(a) Acceptance of gratuities, including gifts, entertainment and favors, (no matter how innocently tendered or received) from those who have or seek business dealings with the Commission, is prohibited as it may be a source of embarrassment to the recipient, and may impair public confidence in the integrity of the conduct of the Government's business. It is emphasized that prohibited conflicts and apparent conficts of interest can sometimes arise even from relationships and transactions that the persons concerned perceive as inconsequential.

(b) Except as provided in paragraphs (c) and (d) of this section, Commission personnel and their spouses, minor children and members of their households shall not solicit nor accept, either directly or indirectly, any gift,

gratuity, favor, entertainment loan or any other thing of monetary value from any person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission,

(2) Conducts operations or activities that are regulated by the Commission or significantly affected by Commission decisions, or

(3) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(c) Employees are specifically prohibited from accepting gifts or favors from vendors, contractors, builders, realtors, tribal officials or other individuals with whom Commission employees do business. This prohibition extends to the acceptance of meals and refreshments offered by individuals conducting or seeking business with the Commission whether during duty or non-duty hours.

(d) The following circumstances are excepted from the prohibitions listed above:

(1) An employee may accept unsolicited advertising or promotional material with the name of the company imprinted, such as pencils, calendars and similar items of nominal intrinsic value.

(2) An employee may accept transportation and meals provided by a contractor in connection with official business when arrangements for Government or commercial transportation or meals are clearly impracticable and the supervisor has granted prior approval.

(3) An employee may accept an invitation extended by a relocatee to attend a housewarming, potluck, accept a meal and refreshments while traveling on the reservation, or similar social activity when circumstances would make it rude for the employee to refuse.

(4) Other circumstances may arise in which it would be to the Commission's advantage for an employee to participate in activities ordinarily prohibited. In such cases, the employee shall consult with his or her supervisor about the course of action to be followed. If prior consultation is not possible, the employee shall exercise prudent judgement and promptly inform the supervisor of the activity.

§ 700.521 Outside work and interests.

Commission employees may engage in outside work or other activity which does not create a conflict between the employee's private interests and official duties nor prevent employees from devoting their talents and energies to the Commission. An employee's outside work shall not reflect discredit upon the Commission.

(a) Employees engaged in or considering outside employment shall inform their supervisor of the work, and supply such additional details as may be required to determine whether the employment is compatible with the full and proper discharge of the employee's official duties.

(b) Similarly, employees shall inform the supervisor and request approval of other types of outside activities which may present an actual or apparent conflict of interest between the employees' official duties and their private lives. The supervisor shall determine if the outside employment or activity is prohibited by these regulations, and so inform the employee. The Designated Agency Ethics Official is available to assist supervisors in making such determinations.

(c) *Guidelines and limitations.* Outside employment or other outside activity is incompatible with the full and proper discharge of an employee's duties and responsibilities and hence is prohibited if:

(1) It would involve the violation of a Federal or State statute, a local ordinance, Executive Order, or regulation to which the employee is subject.

(2) It would be of such extent or nature as to interfere with the efficient performance of the employee's Government duties, or impair the employee's mental or physical capacity to perform them in an acceptable manner.

(3) It would tend to influence the exercise or impartial judgement on any matters coming before the employee in the course of his or her duties;

(4) It would involve work for contractors, subcontractors, realtors, tribal offices, clients or other entities and individuals which have business with or receive services from the Commission or

conduct activities which are regulated by the Commission.

(5) Involves a person or enterprise that may be substantially affected by the performance or nonperformance of the employee's official duties.

(6) It involves the use of the employee's time during official working hours.

(7) It involves the receipt of salary or anything of monetary value from a private source as compensation for services to the Government.

(8) It involves acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value under circumstances in which acceptance might result in, or create the appearance of, a conflict of interest.

(9) It would be of a nature which might be construed by the general public to be an official act of the Commission, or would give the impression that a business or product which is involved in the relocation project is officially endorsed or approved by the Commission.

(10) It would involve use by the employee of official facilities, e.g., office space, office machines, or supplies, or the services of other employees during duty hours.

(11) It might bring discredit upon, or cause unfavorable criticism of, the Government or the Commission or lead to relationships which might impair public confidence in the integrity of the Government or the Commission.

(12) It would involve the use of information obtained as a result of Government employment that is not freely available to the general public in that it either has not been made available to the general public or would not be made available upon request.

§ 700.523 Business relationships among employees.

Business relationships among Commission employees which take place after working hours and away from Commission premises are not matters for regulation, unless they violate the restrictions listed above.

§ 700.525 Use of government information or expertise.

(a) Commission personnel may engage in teaching, lecturing and writing about the relocation program, provided the Information which they present is public knowledge or would be made available to the public upon request.

(b) Employees shall inform their supervisors in advance of any teaching, writing, or lecturing activity which relates to the Commission operations. The Commissioners may at their discretion exercise the right of review and approval of materials to be presented.

(c) Employees must obtain supervisory approval for release of information considered confidential, and release of information not previously published as public information.

(d) Disclosure of information from records shall conform with the provisions of the Freedom of information and the Privacy Acts (5 U.S.C. 552). An employee may not release confidential information maintained by the Commission and available to the employee because of his position as an employee of the Commission. Violation of this prohibition may result in prosecution under the terms of the Privacy Act in addition to any disciplinary penalties levied by the employee's supervisor.

(e) Commission personnel may not accept compensation for an article, speech, consultant service, or other activity if it involves the use of information obtained as the result of Government employment which is not available to the general public as described in paragraph (a) of this section, or results in an actual or appearance of conflict of interest.

(f) Unless there is a definite Commission position on a matter which is the subject of an employee's writing or speech, and the individual has been authorized by the Commissioners to present that position officially, the employee shall expressly present his or her views on the matter as his or her own and not as those of the Commission.

(g) The right of an employee to express personal opinions is respected. However, once the Commission has established policy and procedure, every employee is obligated to carry out all lawful regulations, orders, and assignments, and to support the programs of the Commission as long as they are part of recognized public policy.

(h) In dealing with the public and with relocatees, employees should

avoid issuing opinions or decisions contrary to Commission policy which can be mistaken as official Commission policy.

§ 700.527 Endorsements.

Employees are prohibited from endorsing in an official capacity business products or processes or the services of commercial firms for advertising publicity or sale purposes. Use of materials, products or services, by the Commission does not constitute official endorsement. Employees may not recommend for or against any particular builder, supplier, realtor, contractor or other person or business seeking to sell any product or service to relocatees.

§ 700.529 Negotiations for employment.

An employee shall inform the supervisor and seek the advice of the Designated Agency Ethics Official if he or she wishes to negotiate for future non-Federal employment with persons or organizations having business with the Commission if the employee is involved in making recommendations or decisions affecting those persons or organizations.

§ 700.531 Government property.

Employees shall be held accountable for Government property and monies entrusted to their individual use or in connection with their official duties. An employee has a positive duty to protect and conserve Government property and to use it economically and for official purposes only, for example:

(a) Only official documents and materials may be reproduced on Government reproduction equipment.

(b) Government vehicles may be used only on official business and may not be used for personal use or for travel to or from an employee's place of residence, unless specifically authorized or assigned by the supervisor.

(c) An employee may not use FTS to make personal phone calls at Government expense.

(d) An employee may not use Government purchase authority for personal acquisitions even though reimbursement is made.

§ 700.533 Restrictions affecting travel and travel expense reimbursement.

(a) When an employee is on officially authorized travel his or her expenses are reimbursed by the Government. The employee may not request nor accept reimbursement in cash or kind for travel expenses from any other source, even when the employee's expenses exceed the maximum Government allowance.

(b) An employee who is authorized to attend a convention, seminar, or similar meeting while on official duty, whose travel is being paid by the sponsoring association, may not also claim travel expenses from the Government.

(c) An employee may accept accommodations and expense reimbursement for attending meetings, functions, etc. in his or her private capacity and on his or her own time, provided that such acceptance does not produce an actual or apparent conflict of interest. This restriction prohibits an employee from accepting accommodations or reimbursement from anyone having or seeking business with the Commission.

(d) Commission employees traveling on official business, as well as employees traveling on personal business, may not accept the use of private airplanes, cars, or other means of transportation offered at no expense by individuals conducting or seeking business dealings with the Commission, nor from clients of the Commission.

Exception: An employee may accept transportation and meals of modest value provided by a contractor or client in connection with official business when it is not practical to make arrangements for Government or commercial accommodations. The employee must receive prior approval of the supervisor in such case. This might occur, for example, if an employee were traveling to a remote area where no Government vehicle were available, or where there are no nearby restaurants or eating places. There is no prohibition against a contractor or private citizen traveling as a passenger in a Government vehicle driven by a Commission employee on official business, provided administrative procedures have been followed in making the travel arrangements.

§ 700.535 Nepotism.

An employee may not appoint or advocate the appointment to any position under his or her control, any individual

who is a relative of the employee. No employee shall supervise a member of his or her own family except in emergency situations.

§ 700.537 Indebtedness.

(a) Commission personnel shall pay their just financial obligations in a timely manner, especially those imposed by law, such as Federal, state, or local taxes. For the purposes of this paragraph, ''just financial obligation'' means one acknowledged by the employee or reduced to judgment by a court.

(b) Employees shall promptly refund any salary overpayments and excess travel advances.

(c) An employee's debts to private creditors are his or her personal concern. Any complaints or questions concerning such obligations will be referred to the employee for handling. Creditors and collectors shall not have access to employees on Agency premises during duty hours.

§ 700.539 Soliciting contributions.

(a) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior or accept a gift from an employee receiving less pay than himself or herself. (5 U.S.C. 7351) However, this paragraph does not preclude a voluntary gift of nominal value made on a special occasion.

(b) If authorized by the supervisor, an employee may solicit contributions for charitable causes. He or she may also be permitted to collect small donations for gifts for fellow employees for special occasions during slack moments.

§ 700.541 Fraud or false statement in a Government matter.

''Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly or wilfully falsifies, conceals or covers up by a trick, scheme or device a material fact, or makes or uses any false writing or document knowing the same to contain false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years or both (18 U.S.C. 1001).'' Special attention is required in the certification of time and attendance reports, applications for employment, personnel security forms, requests for travel reimbursement, client certification documents, and purchase orders and receiving forms.

§ 700.543 Gambling.

An employee shall not sponsor or participate in any gambling activity during working hours on Government premises.

§ 700.545 Alcoholism and drug abuse.

An employee who habitually uses intoxicants to excess is subject to removal (5 U.S.C. 7352). The Relocation Commission recognizes alcoholism and drug abuse as serious and treatable illnesses. Excessive absence and poor work performance are two of the specific problems resulting from excessive use of alcohol and drugs. The Commission management will assist any employee who has such a problem to obtain professional help and will make reasonable allowance as permitted by work schedules to allow an employee approved leave for professional treatment. Anyone who seeks such assistance will be guaranteed confidential handling of his or her case. Disciplinary action will be considered if an employee rejects or ignores treatment or other appropriate assistance.

§ 700.547 Consuming intoxicants on Government premises or during duty hours.

Consuming alcohol or non-prescription drugs on agency premises, or while driving or riding in a Government vehicle, or during working hours are prohibited conduct and employees violating this regulation are subject to disciplinary acton, including discharge.

§ 700.549 Employee organizations.

An employee may not knowingly be a member of an organization of Government employees that advocates the overthrow of the United States' constitutional form of government (5 U.S.C. 7311). Employees are also prohibited from striking against the Federal Government. With these restrictions, an employee has the right to form, join, or assist lawful employee organizations. Similarly, an employee has

also the right to refrain from such activity. In either case, the employee may exercise his or her right freely and without fear of penalty or reprisal and shall be protected in the exercise of such rights.

§ 700.551 Franking privilege and official stationery.

An employee is strictly prohibited from using Government franked envelopes with or without applied postage, or official letterhead stationery for personal business. (18 U.S.C. 1719)

§ 700.553 Use of official titles.

Employees are prohibited from using their official titles in conducting private business or participation in private or public group activities not concerned with official duties. Use is strictly limited to those occasions and circumstances where representation is official.

§ 700.555 Notary services.

An employee may not charge a fee for performing notarial services as part of his or her job duties (EO 977 Nov. 24, 1908).

§ 700.557 Political activity.

(a) Regulations on the political activity of Federal employees can be found in 5 U.S.C. 73. In general, the law and the rules prohibit using official authority or influence for the purpose of interfering with an election or affecting its results, and taking an active part in partisan political management or partisan political campaigns.

(b) Special Government employees of the Commission are subject to the political activity restrictions contained in 5 U.S.C. 73 and 18 U.S.C. 602, 603, 607 and 608 while on an active duty status only.

(c) Pursuant to provisions of the regulations cited, employees may take part in certain local elections. However, Commission employees are restricted from taking an active role in political elections of the Navajo and Hopi tribal governments, even though such elections are not partisan in the usual meaning of the word. With respect to tribal elections, employees may not:

(1) Run for tribal elective office.

(2) Organize, direct, nor actively participate in a tribal electoral campaign.

(3) Solicit or attempt to coerce fellow employees to contribute anything of value to an individual or group engaged in tribal political activity.

(4) Circulate petitions, posters, or other political materials during working hours or on Commission premises.

(5) Engage in any other type of tribal political activity which produces a conflict of interest between the employee's job responsibilities and the political activity.

§ 700.559 Equal opportunity.

Commission personnel shall scrupulously adhere to the Commission program of equal opportunity regardless of race, color, religion, sex, age, handicap, or national origin.

§ 700.561 Sexual harassment.

(a) Sexual harassment is a form of employee misconduct which undermines the integrity of the employment relationship. All employees must be allowed to work in an environment free from unsolicited and unwelcome sexual overtures. Sexual harassment is defined by the Office of Personnel Management as ''deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome.'' Sexual harassment does not refer to occasional compliments. It refers to behavior which is not welcome, which is personally offensive and debilitates morale, interfering with the work effectiveness of its victims and their co-workers.

(b) Sexual harassment is a prohibited personnel practice when it results in discrimination for or against an employee on the basis of conduct not related to performance.

For example:

—If submission to sexual advances is a condition of employment, whether expressed in explicit or implicit terms;

—If employment decisions, such as promotion, training, salary increases, rewards, etc., are based on an employee's submission to or rejection of sexual advances;

—If the sexual conduct substantially interferes with an affected person's work performance, or creates an intimidating, hostile or offensive work environment.

(c) Within the Federal Government, a supervisor who uses implicit or explicit coercive sexual behavior to control, influence, or affect the career, salary or job of an employee is engaging in sexual harassment. Similarly, an employee of an agency who behaves in this manner in the process of conducting agency business is engaging in sexual harassment. Finally, any employee who participates in deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which are unwelcome and interfere with work productivity is also engaging in sexual harassment.

(d) It is the policy of the Relocation Commission that sexual harassment is unacceptable conduct in the workplace and will not be condoned. An employee who believes that he or she is subject to sexual harassment may contact one or more of the following people within the Commission for assistance:

(1) The immediate supervisor or second level supervisor.

(2) The EEO Counselor.

(3) The agency EEO Officer.

(4) The EEO Counselor at the Agency Liaison Division of the General Services Administration.

§ 700.563 Statutory restrictions from 18 U.S.C. 207, which are applicable to former Government employees.

(a) *Restrictions applicable to all former officers and employees*—(1) *Permanent bar.* A former Government employee is permanently barred from serving as agent or attorney for anyone other than the United States before any Government office or agency on any particular matter involving specific parties in which the former officer or employee had participated personally and substantially while with the Government.

(2) *Two year bar.* A restriction similar to the one summarized above prevents a former employee for two years from representational activities on all particular matters which were actually pending under the former employee's ''official responsibility'' during the one-year period prior to the termination of such responsibility.

(b) *Restrictions applicable only to ''senior employees.''* (1) Members of the Senior Executive Service are considered senior employees.

(2) Two-year ban on assisting in representation by personal presence. A former senior employee may not assist in the representation of another person by personal presence at an appearance before the Government on any particular matter in which the former employee personally and substantially participated while with the Government.

(3) One-year on attempt to influence former agency. A former senior employee may not represent another person or himself in attempting to influence his own former agency on a matter pending before, or of substantial interest to, such agency. Certain communications are exempted from this provision. These include communications by former senior employees who are employed by State or local governments or by certain educational or medical institutions, other exempt communications are those that are purely social or informational, communications on matters that are personal, including any expression of personal views where the former employee has no pecuniary interest, and response to a former agency's requests for information.

(c) *Implementing regulations.* (1) Detailed regulations implementing this law have been published by the Director, Office of Government Ethics (see 5 CFR part 737). The Designated Agency Ethics Official should be consulted for any additional information.

§ 700.565 Miscellaneous statutory provisions.

Commission personnel shall acquaint themselves with Federal statutes which relate to their ethical and other conducts as employees of the Commission and of the Government. The attention of Commission personnel is directed to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress 2d Session, 72A Stat. B12, the ''Code of Ethics for Government Service.''

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graftm and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of the Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosures of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter.

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in subchapter III of chapter 73 of Title 5, United States Code and 18 U.S.C. 602, 603, 607 and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart P—Hopi Reservation Evictees

SOURCE: 48 FR 51771, Nov. 14, 1983, unless otherwise noted.

§ 700.601 Definitions.

(a) *Hopi reservation evictees.* Hopi reservation evictees are those members of the Navajo Tribe who were evicted from the Hopi Indian Reservation as a consequence of the decision in the case of *United States v. Kabinto* (456 F. 2d 1087) (1972).

(b) *Head of household.* (1) A household is group of two or more persons who live together at a specific location, who form a unit of permanent and domestic character.

(2) The head of household is the individual who speaks on behalf of the members of the household and who is determined by the Commission to represent the household.

(3) In order to be eligible for benefits under this section, an individual must be a head of household as of the date of certification for benefits.

(4) Those single individuals who actually maintain and support themselves as of the date of certification for benefits shall be considered a head of household.

(c) *Hopi reservation.* For purposes of this subpart Hopi reservation shall mean the lands in Land Management District No. Six as defined in the September 28, 1962, Judgment in *Healing v. Jones* Civ. No. 579 pCT (d), Ariz., and shall not include the Hopi Partitioned Lands.

(d) *Equivalent assistance from federal agencies.* Housing provided for Hopi reservation evictees shall be considered equivalent assistance if it meets the Commission's standards for a decent, safe and sanitary dwelling under § 700.55 of these rules.

§ 700.603 Eligibility.

(a) Those heads of household who were members of the Navajo Tribe and were evicted from the Hopi reservation as a consequence of the decision in the *United States v. Kabinto* shall be eligible to receive relocation assistance on a preference basis.

(b) Proof of eviction shall be determined by one of the following criteria:

(1) Inclusion on the list of defendants in the case of *United States v. Kabinto* (456 F. 2d 1087) (1972);

(2) Inclusion on the lists prepared by the BIA dated May 10, 1979, and May 21, 1979, as a result of having provided services to those heads of household.

(3) Inclusion on a list prepared by the Navajo Tribe and submitted to the Commission on January 16, 1981;

(4) Inclusion on a list prepared by the Navajo Legal Aid Service dated April 29, 1970;

(5) Other evidence furnished by the applicant which is sufficient to prove their status as evictees from the Hopi reservation, as determined by the Commission.

§ 700.605 Relocation assistance.

(a) Each eligible head of household of Hopi reservation evictees shall be entitled to receive the following assistance:

(1) Relocation advisory services as provided in § 700.135 of this part;

(2) Moving and search expenses, as provided in § 700.151 of this part;

(3) Replacement housing payments as set forth below.

(b)(1) If the head of household owns no dwelling, the Commission will make funds available to the head of household as provided in these regulations for the acquisition of a replacement home in one of the following manners:

(i) Purchase of an existing home by the head of household,

(ii) Contracting by the head of household for the construction of a home,

(iii) Participation or purchase by the head of household in a mutual help housing or other home ownership project under the U.S. Housing Act of 1937 (50 Stat. 888, as amended; 42 U.S.C. 1401) or in any other federally assisted housing program.

(2) If the eligible head of household owns or is buying or building a home, the Commission will expend relocation benefits in one of the following manners:

(i) If the home is decent, safe and sanitary, but is encumbered by a mortgage, such mortgage existing as of the effective date of these regulations, the Commission may expend replacement housing benefits up to the maximum then existing replacement home benefit to accelerate to the maximum extent possible the achievement by that household of debt-free home ownership.

(ii) If the home is owned free and clear but does not meet Commission decent, safe and sanitary standards; or the home is neither owned free and clear, nor is decent, safe and sanitary, the Commission will, at its discretion either:

(A) Expend replacement home benefits for improvements to assure the home meets the Commission's decent, safe and sanitary standards, or

(B) Expend replacement home benefits for the acquisition of a replacement dwelling as if the eligible head of household or spouse did not own a home as in paragraph (b)(1) of this section.

(3) If the home is decent, safe and sanitary, and is owned free and clear, no replacement housing benefits will be paid.

(4) The amount of the replacement housing payment shall be calculated in accordance with § 700.183 of these rules except that no compensation will be paid for habitation and improvements.

(5) The determination of whether the head of household of Hopi reservation evictees currently occupies a decent, safe and sanitary dwelling shall be made in accordance with § 700.55 of these rules.

(C) If the head of household has received equivalent assistance from other federal agencies as defined in § 700.601(d), they shall not be entitled to additional assistance from the Commission.

§ 700.607 Dual eligibility.

Those individuals who moved from the Hopi reservation following eviction to the Hopi partitioned Lands and who are eligible to receive benefits under the general regulations shall not receive benefits under this subpart but shall receive benefits under the general regulations on a preferential basis.

§ 700.609 Appeals.

Appeals of eligibility, hearings and administrative review (appeals) will be administered under subpart L of this part.

§ 700.611 Application deadline.

The deadline for receipt of applications for benefits under this subpart shall be 120 days following publication of these final rules.

Subpart Q—New Lands Grazing

SOURCE: 56 FR 13397, Apr. 2, 1991, unless otherwise noted.

§ 700.701 Definitions.

(a) *Act* means Pub. L. 93–531 (88 Sat. 1712, 25 U.S.C. 640 *et. seq.*) as amended by Pub. L. 96–305 and Pub. L. 100–666.

(b) *New Lands* means the land acquired for the use of relocatees under the authority of Pub. L. 96–305, 25 U.S.C. 640d–10. These lands include the 215,000 acres of lands acquired by the Navajo and Hopi Indian Relocation Commission and added to the Navajo Reservation and 150,000 acres of private lands previously owned by the Navajo Nation in fee and taken in trust by the United States pursuant to 25 U.S.C. 640d–10.

(c) *Commissioner* means the Commissioner of The Office of Navajo and Hopi Indian Relocation in Flagstaff, Arizona. Reference to approval or other action by the Commissioner will also include approval or other action by another Federal officer under delegated authority from the Commissioner.

(d) *Tribe* means the Navajo Nation.

(e) *Range unit* means a tract of range land designated as a management unit for administration of grazing.

(f) *Range Management Plan* means a land use plan for a specific range unit that will provide for a sustained forage production consistent with soil, watershed, wildlife, and other values.

(g) *Stocking rate* means the authorized stocking rate by range unit as determined by the Commissioner. The stocking rate shall be based on forage production, range utilization, land management applications being applied, and range improvements in place to achieve uniformity of grazing under sustained yield management principles.

(h) *Grazing permit* means a revocable privilege granted in writing limited to entering on and utilizing forage by domestic livestock on a specified tract of land. The term, as used herein, shall include written authorization issued to enable the crossing or trailing of domestic livestock across specified tracts or range.

(i) *Animal unit* (AU) means one adult cow with unweaned calf by her side or equivalent thereof based on comparative forage consumption. Accepted conversion factors are: Sheep and Goats—one ewe, doe, buck, or ram equals 0.25 AU. Horses and Mules—one horse, mule, donkey or burro equals 1.25 AU.

(j) *Sheep unit* means one ewe with lamb at side or a doe goat with kid.

(k) *SUYL* means one sheep unit grazed yearlong.

(l) *HPL* means the area partitioned to the Hopi Tribe pursuant to Pub. L. 93–531 known as the Hopi Partitioned Land.

§ 700.703 Authority.

It is within the authority of the Commissioner on Navajo and Hopi Indian Relocation to administer the New Lands added to the Navajo Reservation pursuant to 25 U.S.C. 6–10(d)–10.

§ 700.705 Objectives.

It is the purpose of the regulations in this part to aid the Navajo Indians in achievement of the following objectives:

(a) The preservation of the forage, the land, and the water resources on the New Lands.

(b) The resettlement of Navajo Indians physically residing on the HPL to the New Lands.

§ 700.707 Regulations; scope.

The grazing regulations in this part apply to the New Lands within the boundaries of the Navajo Reservation held in trust by the United States for the Navajo Tribe which lands were added to the Navajo Reservation pursuant to 25 U.S.C. 640(d)–10; 25 CFR parts 166 and 167 are not applicable to the New Lands.

§ 700.709 Grazing privileges.

(a) A list of permittees eligible to receive grazing permits is kept at the Office of Navajo and Hopi Indian Relocation in Flagstaff, Arizona. This list is composed of individuals eligible for New Lands grazing permits who:

(1) Have a current HPL grazing permit, or have had an HPL permit issued since 1980, or are current HPL residents and can show documentation of a past grazing permit issued in their name for grazing on an area now on the HPL, and

(2) Who have not received relocation benefits under Pub. L. 93–531, and who relocate from the HPL on to a New Lands range unit. Individuals on this list will receive a commitment that a permit will be issued to them.

(b) If such persons cannot relocate immediately because their chosen relocation site is not ready for occupancy, the Office will issue a commitment to them that a grazing permit will be granted upon their relocation.

(c) If such persons are notified by the Office that their relocation site is ready for occupancy and they fail or refuse to make timely arrangements to relocate when requested by the Office to do so, the commitment may be withdrawn.

(d) Persons on this list must file an application for a New Lands Grazing Permit. The Commissioner will determine when the application period will close and will publish notice of that date. After the close of the period for application, the Commissioner, in his sole discretion, may issue permits to individuals if it is determined that to do so will facilitate relocation.

(e) Initial determinations on eligibility for grazing permits will be made by the Range Supervisor.

[56 FR 13397, Apr. 2, 1991, as amended at 57 FR 24363, June 9, 1992]

§ 700.711 Grazing permits.

(a) All livestock grazed on the New Lands must be covered by a grazing permit authorized and issued by the Commissioner on Navajo and Hopi Indian Relocation.

(b) Permit holders must:

(1) Be enrolled Navajo Tribal members,

(2) Be over 18 years of age,

(3) Maintain a permanent residency on the New Lands Range Unit of permit issue, and

(4) Own livestock which graze on the range unit of permit issue.

(c) Permits will be issued for a base of 80 SUYL (20 AU) and may not be divided or transferred for less than 80 SUYL.

(d)(1) Temporary seasonal grazing permits for periods not to exceed one year may be issued to permittees:

(i) To use extra forage made available under rotation grazing management as regulated by a range unit management plan,

(ii) To use forage created by unusually favorable climatic conditions,

(iii) To allow use of range while term permits are held in suspension under § 700.715(d).

(2) These temporary permits may be reissued prior to termination provided:

(i) The permittee is managing grazing in compliance with grazing regulations,

(ii) Livestock grazing is in compliance with the cooperative range unit range management plan, and

(iii) Forage is available on the range to sustain the livestock authorized under the temporary permit.

§ 700.713 Tenure of grazing permits.

(a) All active regular grazing permits shall be for five years and shall be automatically reissued for another five-year period provided the permittee is not in violation of § 700.711 or 700.715 or 700.719 or 700.723 or 700.725 of the regulations. Permits will initially be issued with an ending date of October 31 of the fifth year following the date of initial issuance.

(b) Amendments to these regulations extending or limiting the tenure of grazing permits are applicable and become a condition of all previously granted permits.

§ 700.715 Assignment, modification, and cancellation of grazing permits.

(a) Grazing permits may be assigned or transferred with the written consent of the contracting parties. The Commissioner will issue a new permit provided the transferee meets qualifications under § 700.711(b).

(b) Temporary permits issued under § 700.711(d) are directly tied to the term permit and may be transferred with the term permit if the transferee signs the range unit management plan which provides the management for continuation of the temporary grazing permit.

Temporary permits will not be transferred and shall be null and void if the term permit transferee does not sign the management plan agreeing to practice conservation management.

(c) Grazing permits may be assigned for transfer through a notarized document to an heir who meets the qualifications for a grazing permit under § 700.711.

(d) Grazing permits must be transferred in whole to a single transferee—the transferor relinquishing all grazing privileges at the time of transfer.

(e) The Commissioner may revoke or withdraw all or any part of a grazing permit by cancellation or modification on a 30 day written notice for violation of the permit or of the management plan, non-payment of grazing fees, violation of these regulations, or because of the termination of the trust status of the permitted land.

§ 700.717 Stocking rate.

The Commissioner will determine livestock carrying capacity for each range unit and set the stocking rate and adjust that rate as conditions warrant. The Commissioner may consult with the Tribe when making adjustments to the stocking rate.

§ 700.719 Establishment of grazing fees.

The Commissioner may establish a minimum acceptable grazing fee per SUYL. The Commissioner may consult with the Tribe prior to establishing fees.

§ 700.721 Range management plans.

The Commissioner (or his designee) and the permittees of each range unit will meet as a group and develop a Range Management Plan for the common use of the range unit. The plan will include but will not be limited to the following:

(a) Goals for improving vegetative productivity.

(b) Incentives for carrying out the goals.

(c) Stocking rate.

(d) Record of brands of livestock authorized to graze on the range unit.

(e) Grazing plan and schedule.

(f) Range monitoring schedule.

(g) Wildlife management.

(h) Needs assessment for range and livestock improvements.

(i) Scheduling for operation and maintenance of existing range improvements.

§ 700.722 Grazing associations.

(a) The Commissioner may recognize, cooperate with, and assist range unit livestock associations in the management of livestock and range resources.

(b) These associations will provide the means for the members:

(1) To jointly manage their permitted livestock and the range resources,

(2) To meet jointly with the ONHIR range staff to discuss and formulate range management plans,

(3) To express their wishes through designated officers or committees,

(4) To share costs for handling livestock, construction of range improvements, fence and livestock facilities maintenance, and other land or livestock improvement projects agreed on, and

(5) To formulate association special rules needed to assure cooperation and resource management.

(c) The requirements for receiving recognition by the Commissioner are:

(1) The members of the association must be grazing permittees and constitute a majority of the grazing permittees on the range unit involved.

(2) The officers of the association must be elected by a majority of the association members or of a quorum as specified by the association's constitution and bylaws.

(3) The officers other than secretary and treasurer must be grazing permittees on the range unit involved.

(4) The association's activities must be governed by a constitution and bylaws acceptable to the Commissioner and signed by him.

(5) The association's constitution and bylaws must recognize conservation management goals and the need to follow a range unit management plan.

(d) The Commissioner may withdraw his recognition of the association whenever:

(1) The majority of the grazing permittees request that the association be dissolved.

(2) The association becomes inactive and does not meet in annual or special

meetings during a consecutive two-year period.

(e) A recognized association may hold a grazing permit to benefit its members according to the rules of the association constitution and bylaws. All of the association's livestock will be run under an association brand properly registered with the Navajo Tribe and the ONHIR.

(f) Associations may acquire permits from consenting permittees on the range unit in accordance with § 700.711 and may assign or transfer these permits in accordance with § 700.715.

§ 700.723 Control of livestock disease and parasites.

Whenever livestock within the New Lands become infected with contagious or infectious disease or parasites or have been exposed thereto, such livestock must be treated and the movement thereof restricted by the responsible permittee in accordance with applicable laws.

§ 700.725 Livestock trespass.

The following acts are prohibited:

(a) The grazing of livestock upon, or driving of livestock across, any of the New Lands without a current approved grazing or crossing permit.

(b) The grazing of livestock upon an area specifically rested from the grazing of livestock according to the range unit Range Management Plan.

(c) The grazing of livestock upon any land withdrawn from use for grazing to protect it from damage after receipt of appropriate notice from the Commissioner.

(d) The grazing of livestock in excess of those numbers authorized on the livestock grazing permit approved by the Commissioner.

(e) Grazing of livestock whose brand is not recorded in the range unit Range Management Plan.

The owner of any livestock grazing in trespass on the New Lands is liable to a civil penalty of $1 per head per day for each cow, bull, horse, mule or donkey and 25¢ per head per day for each sheep or goat in trespass and a reasonable value for damages to property injured or destroyed. The Commissioner may take appropriate action to collect all such penalties and damages and seek injunctive relief when appropriate. All payments for such penalties and damages shall be paid to the Commissioner for use as a range improvement fund.

§ 700.727 Impoundment and disposal of unauthorized livestock.

Unauthorized livestock within any range unit of the New Lands which are not removed therefrom within the periods prescribed by the regulation will be impounded and disposed of by the Commissioner as provided herein.

(a) When the Commissioner determines that unauthorized livestock use is occurring, and has definite knowledge of the kind of unauthorized livestock and knows the name and address of the owners, the owner shall be given written notice and a 10 day period shall be allowed for the permittee to solve the unauthorized use without penalty. If after this 10 day period the unauthorized use is not resolved, such livestock may be impounded at any time after five days after written Notice of Intent to Impound Unauthorized Livestock is mailed by certified mail or personally delivered to such owners or their agent.

(b) When the Commissioner determines that unauthorized livestock use is occurring, but does not have complete knowledge of the number and class of livestock, or if the name and address of the owner thereof are unknown, such livestock may be impounded at anytime after 15 days after the date a General Notice of Intent to Impound Unauthorized Livestock is first published in a local newspaper, posted at the nearest chapter house, and in one or more local trading posts.

(c) Unauthorized livestock on the New Lands which are owned by persons given notice under paragraph (a) of this section and any unauthorized livestock in areas for which notice has been posted and published under paragraph (b) of this section, will be impounded without further notice anytime within the 12-month period immediately following the effective date of the notice.

(d) Following the impoundment of unauthorized livestock, a notice of sale of impounded livestock or unauthorized livestock will be published in a local newspaper, posted at the nearest

chapter house, and in one or more local trading posts. The notice will describe the livestock and specify the date, time, and place of sale. The date set shall be at least five days after the publication and posting of such notice.

(e) The owners or their agent may redeem the livestock anytime before the time set for the sale by submitting proof of ownership and paying for all expenses incurred in gathering, impounding, and feeding or pasturing the livestock and any trespass fees and/or damages caused by the animals.

(f) Livestock erroneously impounded shall be returned to the rightful owner, and all expenses accruing thereto shall be waived.

(g) If the livestock are not redeemed before the time fixed for their sale, they shall be sold at public sale to the highest bidder. When livestock are sold pursuant to this regulation, the Commissioner shall furnish the buyer a bill of sale or other written instrument evidencing the sale.

(h) The proceeds of any sale of impounded livestock shall be applied as follows:

(1) To the payment of all expenses incurred by the United States in gathering, impounding, and feeding or pasturing the livestock.

(2) Trespass penalties assessed pursuant to § 700.725 shall be paid to a separate account to be administered by the Commissioner for use as a range improvement fund for the New Lands.

(3) Any remaining amount shall be paid over to the owner of said livestock upon his submitting proof of ownership.

Any proceeds remaining after payment of the first and second items noted above, not claimed within one year from the date of sale, will be credited to the United States.

§ 700.729 Amendments.

These regulations may be amended or superseded as needed.

§ 700.731 Appeals.

Persons who have filed a claim for a grazing permit and whose claim has been denied by the Range Supervisor may appeal to the Commissioner. Appeals must be made in writing and must be received by the Office not more than 30 days after the date the claim was denied. The appeal shall state with specificity why the decision being appealed is in error and shall incorporate all supporting documents. The Commissioner will issue a decision affirming or reversing the decision of the Range Supervisor within 60 days of receipt of the appeal. Such decision will constitute final action by the Office and will be communicated to the appellant by certified mail.

Subpart R—Protection of Archaeological Resources

SOURCE: 61 FR 35667, July 8, 1996, unless otherwise noted.

§ 700.801 Purpose.

(a) The regulations in this subpart implement provisions of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa–11) by establishing the uniform definitions, standards, and procedures to be followed by the O.N.H.I.R. New Lands Manager in providing protection for archaeological resources, located on the New Lands. The regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469: 43 U.S.C. 1996), through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources.

(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

§ 700.803 Authority.

The regulations in this part are promulgated pursuant to section 10(b) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii). Section 10(b) of the Act (16 U.S.C. 470ii)

provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations in this part, as may be necessary for carrying out the purposes of the Act.

§ 700.805 Definitions.

As used for purposes of this part:

(a) *Archaeological resource* means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.

(1) *Of archaeological interest* means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(2) *Material remains* means physical evidence of human habitation, occupation, use, or activity, including the site, location or context in which such evidence is situated.

(3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section.

(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars, or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits, or graves, hearths, kilns, post molds, wall trenches, middens);

(ii) Surface or subsurface artifact concentrations or scatters;

(iii) Whole or fragmentary tools, implements, containers, weapons, and weapon projectiles, clothing, and ornaments (including, but not limited to pottery and other ceramics, cordage, basketry and other weaving, bottles and other glassware, bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked ground or pecked stone);

(iv) By-products, waste products, or debris resulting from manufacture or use of human-made or natural materials;

(v) Organic waste (including, but not limited to vegetal and animal remains, coprolites);

(vi) Human remains (including, but not limited to, bone, teeth, mummified flesh, burials, cremations);

(vii) Rock carvings, rock paintings, intaglios, and other works of artistic or symbolic representation;

(viii) Rockshelters and caves or portions thereof containing any of the material remains described in this paragraph (a);

(ix) All portions of shipwrecks (including, but not limited to armaments, apparel, tackle, cargo);

(x) Any portion or piece of material remains described in this paragraph (a).

(4) The following material remains shall not be considered of archaeological interest, and shall not be considered to be archaeological resources for purposes of the Act and this part, unless found in a direct physical relationship with archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Federal Land Manager may determine that certain material remains, in specified areas under the Federal Land Manager's jurisdiction and under specified circumstances, are not or are no longer of archaeological interest and are not to be considered archaeological resources under this part. Any determination made pursuant to this paragraph (a)(5) shall be documented. Such determination shall in no way affect the Federal Land Manager's obligations under other applicable laws or regulations.

(b) *Arrowhead* means any projectile point which appears to have been designed for use with an arrow.

(c) *Commissioner* means the Commissioner of the Office of Navajo and Hopi Indian Relocation. Reference to approval of other action by the Commissioner will also include approval or other action by another Federal Officer

under delegated authority from the Commissioner.

(d) *Federal Land Manager* means, with respect to the New Lands, the Commissioner of Navajo and Hopi Indian Relocation, having primary management authority over such lands, including persons to whom such management authority has been officially delegated.

(e) *New Lands* means the land acquired for the use of relocatees under the authority of Public Law 96–305, 25 U.S.C., 640(d)–10. These lands include the 250,000 acres of land acquired by the Navajo and Hopi Indian Relocation Commission and added to the Navajo Reservation, 150,000 acres of private lands previously owned by the Navajo Nation in fee and taken in trust by the United States pursuant to 25 U.S.C. 640d–10 and up to 35,000 acres of land in the State of New Mexico to be acquired and added to the Navajo Reservation.

(f) *Indian lands* means lands of The Navajo Nation, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.

(g) *Indian tribe* or *Tribe* means The Navajo Nation.

(h) *Person* means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(i) *State* means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(j) *Tribe* means the Navajo Nation.

(k) *Act* means the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470–aa11.)

§ 700.807 Prohibited acts.

(a) No person may excavate, remove, damage or otherwise alter or deface any archaeological resource located on the New Lands or Indian lands unless such activity is pursuant to a permit issued under § 700.815 or exempted by § 700.809(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

§ 700.809 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from the New Lands or Indian lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Federal Land Manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal Land Manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in § 700.815(a) of this part.

(b) *Exceptions:* (1) No permit shall be required under this part for any person conducting activities on the New Lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removed as used in this part. This exception does not, however, affect the Federal Land Manager's responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not

result in disturbance of any archaeological resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part;

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal Land Manager's direction, associated with the management of archaeological resources, need not follow the permit application procedures of § 700.811. However, the Federal Land Manager shall insure that provisions of §§ 700.815 and 700.817 have been met by other documented means and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal Land Manager, have been the subject of consideration under § 700.813.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal Land Manager shall issue a permit, subject to the provisions of §§ 700.809(b)(5), 700.813, 700.815(a) (3), (4), (5), (6), and (7), 700.817, 700.819, 700.823, 700.825(a), to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating, and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Federal Land Manager.

(e) Under other statutory, regulatory, or administrative authorities governing the use of the New Lands and Indian lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on the New Lands or Indian lands any activity related to but believed to fall outside the scope of this part should consult with the Federal Land Manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

§ 700.811 Application for permits and information collection.

(a) Any person may apply to the appropriate Federal Land Manager for a permit to excavate and/or remove archaeological resources from the New Lands or Indian lands and to carry out activities associated with such excavation and/or removal.

(b) Each application for a permit shall include:

(1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, location maps, and proposed outlet for public written dissemination of the results.

(2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training and experience in accord with the minimal qualifications listed in § 700.815(a).

(3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.

(4) Evidence of the applicant's ability to initiate, conduct and complete the proposed work, including evidence of logistical support and laboratory facilities.

(5) Where the application is for the excavation and/or removal of archaeological resources on the New Lands, the names of the university, museum,

or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the Navajo Nation.

(6) Where the application is for the excavation and/or removal of archaeological resources on Indian lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work, and all collections in the event the Indian owners do not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work.

(c) The Federal Land Manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.

(d) *Paperwork Reduction Act.* The information collection requirement contained in § 700.811 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1024–0037. The purpose of the information collection is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be property preserved, and that the permitted activity would not conflict with the management of the New Lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.

§ 700.813 Notification to Indian tribes of possible harm to, or destruction of, sites on the New Lands having religious or cultural importance.

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on the New Lands, as determined by the Federal Land Manager, at least 30 days before issuing such permit the Federal Land Manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Federal Land Manager to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal Land Manager.

(2) The Federal Land Manager may provide notice to any other Native American group that is known by the Federal Land Manager to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Federal Land Manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under § 700.817.

(4) When the Federal Land Manager determines that a permit applied for under this part must be issued immediately because of an imminent threat or loss or destruction of an archaeological resource, the Federal Land Manager shall so notify the appropriate tribe

(b)(1) In order to identify sites of religious or cultural importance, the Federal Land Manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the

Federal Land Manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w–3).

(2) If the Federal Land Manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to the New Lands under the Federal Land Manager's jurisdiction, the Federal Land Manager may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Federal Land Manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

§ 700.815 Issuance of permits.

(a) The Federal Land Manager may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

(1) The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

(i) A graduate degree in anthropology or archaeology, or equivalent training and experience;

(ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;

(iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of the permit; and

(v) Applicants proposing to engage in historical archaeology should have at least one year of experience in research concerning archaeological resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

(2) The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

(3) The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the public lands concerned;

(4) Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the New Lands or Indian lands, and the proposed work has been agreed to in writing by the Federal Land Manager, pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a)(2) and (a)(3) of this section shall be deemed satisfied by the prior approval.

(5) Written consent has been obtained, for work proposed on Indian lands, from the Indian land owner and the Indian tribe having jurisdiction over such lands;

(6) Evidence is submitted to the Federal Land Manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

(7) The applicant has certified that, not later than 980 days after the date

the final report is submitted to the Federal Land Manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit;

(i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archaeological resources from the New Lands.

(ii) All artifacts, samples, and collections resulting from work under the requested permit for which the custody or disposition is not undertaken by the Indian owners, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit, where the permit is for the excavation and/or removal of archaeological resources from Indian lands.

(b) When the area of the proposed work would cross jurisdictional boundaries, so that permit applications must be submitted to more than one Federal land manager, the Federal land managers shall coordinate the review and evaluation of applications and the issuance of permits.

§ 700.817 Terms and conditions of permits.

(a) In all permits issued, the Federal Land Manager shall specify:

(1) The nature and extent of work allowed and required under the permit, including the time, duration, scope, location and purpose of the work;

(2) The name of the individual(s) responsible for conducting the work and, if different, the name of the individual(s) responsible for carrying out the terms and conditions of the permit;

(3) The name of any university, museum, or other scientific or educational institution in which any collected materials and data shall be deposited; and

(4) Reporting requirements.

(b) The Federal Land Manager may specify such terms and conditions as deemed necessary, consistent with this part, to protect public safety and other values and/or resources, to secure work areas to safeguard other legitimate land uses, and to limit activities incidental to work authorized under a permit.

(c) The Federal Land Manager shall include in permits issued for archaeological work on Indian lands such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands, and for archaeological work on the New Lands shall include such terms and conditions as may have been developed pursuant to § 700.813.

(d) Initiation of work or other activities under the authority of a permit signifies the permittee's acceptance of the terms and conditions of the permit.

(e) The permittee shall not be released from requirements of a permit until all outstanding obligations have been satisfied, whether or not the term of the permit has expired.

(f) The permittee may request that the Federal Land Manager extend or modify a permit.

(g) The permittee's performance under any permit issued for a period greater than 1 year shall be subject to review by the Federal Land Manager, at least annually.

§ 700.819 Suspension and revocation of permits.

(a) *Suspension or revocation for cause.* (1) The Federal Land Manager may suspend a permit issued pursuant to this part upon determining that the permittee has failed to meet any of the terms and conditions of the permit or has violated any prohibition of the Act of § 700.807. The Federal Land Manager shall provide written notice to the permittee of suspension, the cause thereof, and the requirements which must be met before the suspension will be removed.

(2) The Federal Land Manager may revoke a permit upon assessment of a civil penalty under § 700.829 upon the permittee's conviction under section 6 of the Act, or upon determining that the permittee has failed after notice under this section to correct the situation which led to suspension of the permit.

(b) *Suspension or revocation for management purposes.* The Federal Land Manager may suspend or revoke a permit without liability to the United

States, its agents, or employees when continuation of work under the permit would be in conflict with management requirements not in effect when the permit was issued. The Federal Land Manager shall provide written notice to the permittee stating the nature of and basis for the suspension or revocation.

§ 700.821 Appeals relating to permits.

Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures which may be established by the Federal Land Manager pursuant to section 10(b) of the Act and this part.

§ 700.823 Relationship to section 106 of the National Historic Preservation Act.

Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with Section 106 of the Act of October 15, 1996 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Federal Land Manager from compliance with section 106 where otherwise required.

§ 700.825 Custody of archaeological resources.

(a) Archaeological resources excavated or removed from public lands remain the property of the Navajo Nation.

(b) Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.

§ 700.827 Determination of archaeological or commercial value and cost of restoration and repair.

(a) *Archaeolgical value.* For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in § 700.807 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtained prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(b) *Commercial value.* For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in § 700.807 of this part or conditions of a permit issued pursuant to this part shall be for its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation to the extent that its prior condition can be ascertained.

(c) *Cost of restoration and repair.* For purposes of this part, the cost of restoration and repair of archaeological resources damages as a result of a violation or prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following.

(1) Reconstruction of the archaeological resource;

(2) Stabilization of the archaeological resource;

(3) Ground contour reconstruction and surface stabilization;

(4) Research necessary to carry out reconstruction or stabilization;

(5) Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

(6) Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;

(7) Reinterment of human remains in accordance with religious custom and

State, local, or tribal law, where appropriate, as determined by the Federal Land Manager.

(8) Preparation of reports relating to any of the above activities.

§ 700.829 Assessment of civil penalties.

(a) The Federal Land Manager may assess a civil penalty against any person who has violated any prohibition contained in § 700.807 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.

(b) *Notice of violation.* The Federal Land Manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal Land Manager shall include in the notice:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;

(3) The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of the proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;

(4) Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Federal Land Manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.

(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:

(1) Seek informal discussions with the Federal Land Manager;

(2) File a petition for relief in accordance with paragraph (d) of this section;

(3) Take no action and await the Federal Land Manager's notice of assessment;

(4) Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.

(d) *Petition for relief.* The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal Land Manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.

(e) *Assessment of penalty.* (1) The Federal Land Manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion of informal discussions, whichever is later.

(2) The Federal Land Manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal Land Manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal Land Manger shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal Land Manager shall determine a penalty amount in accordance with § 700.831.

(f) *Notice of assessment.* The Federal Land Manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal Land Manager shall include

the following in the notice of assessment.

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in § 700.831 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) *Hearings.* (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request, as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal Land Manager under paragraph (f) of this section or any offer of mitigation or remission made by the Federal Land Manager.

(h) *Final administrative decision.* (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) *Payment of penalty.* (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment assessed, unless a timely request for appeal has been filed with a U.S. District Court, as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal Land Manager may request the Attorney General to institute a civil action to collect the penalty in a U.S. District Court for any district in which the person assessed a civil penalty is found, resides, or transacts business. Where the Federal Land Manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal Land Manager.

(j) *Other remedies not waived.* Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

§ 700.831 Civil penalty amounts.

(a) *Maximum amount of penalty.* (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in § 700.807 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the commercial value of archaeological resources destroyed or not recovered.

(2) Where the persons being assessed a civil penalty has committed any previous violation of any prohibition in § 700.807 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be doubled the cost of restoration and repair plus double the commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) *Determination of penalty amount, mitigation, and remission.* The Federal Land Manager may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors.

(i) Agreement by the person being assessed a civil penalty to return to the Federal Land Manager archaeological resources removed from the New Lands or Indian lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Federal Land Manager in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on the New Lands or Indian Lands.

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation.

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances.

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) When the penalty is for a violation on Indian lands, the Federal Land Manager shall consult with and consider the interests of the Indian landowner and the Indian tribe having jurisdiction over the Indian lands prior to proposing to mitigate or remit the penalty.

(3) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on the New Lands, the Federal Land Manager should consult with and consider the interests of the affected tribe(s) prior to proposing to mitigate or remit the penalty.

§ 700.833 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal Land Manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or local government who furnish information or render services in the performance of their official duties, and persons who have provided information under § 700.831(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indiana or Indian tribes.

§ 700.835 Confidentiality of archaeological resource information.

The Federal Land Manager shall not make available to the public under subchapter II of chapter 5 of title 5 of the United States Code or any other provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(a) The Federal Land Manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469–469c) without risking harm to the archaeological resource or to the site in which it is located.

(b) The Federal Land Manager shall make information available, when the Governor of any State has submitted to the Federal Land Manager a written request for information concerning the archaeological resources within the requesting Governor's state; provided that the request includes:

(1) The specific archaeological resource or area about which information is sought.

(2) The purpose for which the information is sought; and

(3) The Governor's written commitment to adequately protect the confidentiality of the information.

§ 700.837 Report.

Each Federal Land Manager, when requested by the Secretary of the Interior, shall submit such information as is necessary to enable the Secretary to comply with section 13 of the Act.

§ 700.839 Permitting procedures for Navajo Nation lands.

(a) If the lands involved in a permit application are Indian lands, the consent of the appropriate Indian tribal authority or individual Indian landowner is required by the Act and the regulations in this subpart.

(b) When Indian tribal lands are involved in an application for a permit or a request for extension or modification of a permit, the consent of the Indian tribal government must be obtained. For Indian allotted lands outside reservation boundaries, consent from only the individual landowner is needed. When multiple-owner allotted lands are involved, consent by more than 50 percent of the ownership interest is sufficient. For Indian allotted lands within reservation boundaries, consent must be obtained from the Indian tribal government and the individual landowner(s).

(c) The applicant should consult with the Office concerning procedures for obtaining consent from the appropriate Indian tribal authorities and submit the permit application to the Office that is responsible for the administration of the lands in question. The Office shall ensure that consultation with the appropriate Indian tribal authority or individual Indian landowner regarding terms and conditions of the permit occurs prior to detailed evaluation of the application. The Indian tribal authority or individual Indian landowner shall have 30 days from the date of receipt of the consultation request from the Office to respond to such request. Failure of the Indian tribal authority or individual Indian landowner to respond timely to the consultation request shall be deemed to be consent to the request. Permits shall include terms and conditions requested by the Indian tribe or Indian landowner pursuant to § 700.817 of this part.

(d) The issuance of a permit under this part does not remove the requirement for any other permit required by Indian tribal law.

PART 720—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

Sec.

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AUTHORITY: 29 U.S.C 794.

SOURCE: 51 FR 22891, 22896, June 23, 1986, unless otherwise noted.

§ 720.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the U.S. Postal Service.

§ 720.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 720.103 Definitions.

For purposes of this part, the term—

''Assistant Attorney General'' means the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice.

''Auxiliary aids'' means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

''Complete complaint'' means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

''Facility'' means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

''Handicapped person'' means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) ''Physical or mental impairment'' includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alocoholism.

(2) ''Major life activities'' includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) ''Has a record of such an impairment'' means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) ''Is regarded as having an impairment'' means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

''Historic preservation programs'' means programs conducted by the agency that have preservation of historic properties as a primary purpose.

''Historic properties'' means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

''Qualified handicapped person'' means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped

person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can acheive the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) ''Qualified handicapped person'' is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 720.140.

''Section 504'' means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

''Substantial impairment'' means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 720.104—720.109 [Reserved]

§ 720.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 720.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 720.112—720.129 [Reserved]

§ 720.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to

reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangments, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 720.131—720.139 [Reserved]

§ 720.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 720.141—720.148 [Reserved]

§ 720.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 720.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 720.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the

program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 720.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 720.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 720.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987 a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and

written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

(e) *Housing.* The agency shall ensure that any dwelling purchased for a relocatee household is readily accessible to and usable by any handicapped person who is a member of that household.

[51 FR 22891, 22896, June 23, 1986, as amended at 51 FR 22892, June 23, 1986]

§ 720.151 Program accessibility: New construction and alterations.

(a) Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

(b) The agency shall ensure that any dwelling that is constructed for a relocatee household is designed and constructed so as to be readily accessible to and usable by any handicapped person who is a member of that household.

[51 FR 22891, 22896, June 23, 1986, as amended at 51 FR 22892, June 23, 1986]

§§ 720.152—720.159 [Reserved]

§ 720.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and adminstrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 720.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If

an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 720.161—720.169 [Reserved]

§ 720.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Assistant Director for Relocation Operations shall be responsible for coordinating implementation of this section. Complaints may be mailed to Assistant Director for Relocation Operations, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by paragraph (g) of this section. The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22891, 22896, June 23, 1986, as amended at 51 FR 22891, June 23, 1986]

PARTS 721–899—[RESERVED]

CHAPTER V—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, AND INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

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900.256 Will a reassumption adversely affect funding available for the reassumed program?

AUTHORITY: 25 U.S.C. 450f et seq.

SOURCE: 61 FR 32501, June 24, 1996, unless otherwise noted.

Subpart A—General Provisions

§900.1 Authority.

These regulations are prepared, issued, and maintained jointly by the Secretary of Health and Human Services and the Secretary of the Interior, with the active participation and representation of Indian tribes, tribal organizations, and individual tribal members pursuant to the guidance of the Negotiated Rulemaking procedures required by section 107 of the Indian Self-Determination and Education Assistance Act.

§900.2 Purpose and scope.

(a) *General.* These regulations codify uniform and consistent rules for contracts by the Department of Health and Human Services (DHHS) and the Department of the Interior (DOI) in implementing title I of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, 25 U.S.C. 450 et seq., as amended and sections 1 through 9 preceding that title.

(b) *Programs funded by other Departments and agencies.* Included under this part are programs administered (under current or future law or interagency agreement) by the DHHS and the DOI for the benefit of Indians for which appropriations are made to other Federal agencies.

(c) *This part included in contracts by reference.* Each contract, including grants and cooperative agreements in lieu of contracts awarded under section 9 of the Act, shall include by reference the provisions of this part, and any amendment thereto, and they are binding on the Secretary and the contractor except as otherwise specifically authorized by a waiver under section 107(e) of the Act.

(d) *Freedom of Information.* Access to records maintained by the Secretary is governed by the Freedom of Information Act (5 U.S.C. 552) and other applicable Federal law. Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the record keeping systems of the DHHS or the DOI, or both, records of the contractors (including archived records) shall not be considered Federal records for the purpose of the Freedom of Information Act. The Freedom of Information Act does not apply to records maintained solely by Indian tribes and tribal organizations.

(e) *Privacy Act.* Section 108(b) of the Indian Self-Determination Act states that records of the tribal government or tribal organizations shall not be considered Federal records for the purposes of the Privacy Act.

(f) *Information collection.* The Office of Management and Budget has approved, under 44 U.S.C. chapter 35, the information collection requirements in part 900 under assigned control number 1076–0136. The information for part 900 is being collected and used by the Departments to determine applicant eligibility, evaluate applicant capabilities, protect the service population, safeguard Federal funds and other resources, and permit the Departments to administer and evaluate contract programs.

§900.3 Policy statements.

(a) *Congressional policy.* (1) Congress has recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction, planning, conduct and administration of educational as well as other Federal programs and services to Indian communities so as to render such programs and services more responsive to the needs and desires of those communities.

(2) Congress has declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through

the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

(3) Congress has declared that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

(4) Congress has declared that the programs, functions, services, or activities that are contracted and funded under this Act shall include administrative functions of the Department of the Interior and the Department of Health and Human Services (whichever is applicable) that support the delivery of services to Indians, including those administrative activities supportive of, but not included as part of, the service delivery programs described in this paragraph that are otherwise contractible. The administrative functions referred to in the preceding sentence shall be contractible without regard to the organizational level within the Department that carries out such functions. Contracting of the administrative functions described herein shall not be construed to limit or reduce in any way the funding for any program, function, service, or activity serving any other tribe under the Act or any other law. The Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another Indian tribe or tribal organization under this Act.

(5) Congress has further declared that each provision of the Act and each provision of contracts entered into thereunder shall be liberally construed for the benefit of the tribes or tribal organizations to transfer the funding and the related functions, services, activities, and programs (or portions thereof), that are otherwise contractible under the Act, including all related administrative functions, from the Federal government to the contractor.

(6) Congress has declared that one of the primary goals of the 1994 amendments to the Act was to minimize the reporting requirements applicable to tribal contractors and to eliminate excessive and burdensome reporting requirements. Reporting requirements over and above the annual audit report are to be negotiated with disagreements subject to the declination procedures of section 102 of the Act.

(7) Congress has declared that there not be any threshold issues which would avoid the declination, contract review, approval, and appeal process.

(8) Congress has declared that all self-determination contract proposals must be supported by the resolution of an Indian tribe(s).

(9) Congress has declared that to the extent that programs, functions, services, and activities carried out by tribes and tribal organizations pursuant to contracts entered into under this Act reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of contract funds determined under Section 106(a) of the Act, the Secretary shall make such savings available for the provision of additional services to program beneficiaries, either directly or through contractors, in a manner equitable to both direct and contracted programs.

(b) *Secretarial policy*. (1) It is the policy of the Secretary to facilitate the efforts of Indian tribes and tribal organizations to plan, conduct and administer programs, functions, services and activities, or portions thereof, which the Departments are authorized to administer for the benefit of Indians because of their status as Indians. The Secretary shall make best efforts to remove any obstacles which might hinder Indian tribes and tribal organizations including obstacles that hinder tribal

autonomy and flexibility in the administration of such programs.

(2) It is the policy of the Secretary to encourage Indian tribes and tribal organizations to become increasingly knowledgeable about the Departments' programs administered for the benefit of Indians by providing information on such programs, functions and activities and the opportunities Indian tribes have regarding them.

(3) It is the policy of the Secretary to provide a uniform and consistent set of rules for contracts under the Act. The rules contained herein are designed to facilitate and encourage Indian tribes to participate in the planning, conduct, and administration of those Federal programs serving Indian people. The Secretary shall afford Indian tribes and tribal organizations the flexibility, information, and discretion necessary to design contractible programs to meet the needs of their communities consistent with their diverse demographic, geographic, economic, cultural, health, social, religious and institutional needs.

(4) The Secretary recognizes that contracting under the Act is an exercise by Indian tribes of the government-to-government relationship between the United States and the Indian tribes. When an Indian tribe contracts, there is a transfer of the responsibility with the associated funding. The tribal contractor is accountable for managing the day-to-day operations of the contracted Federal programs, functions, services, and activities. The contracting tribe thereby accepts the responsibility and accountability to the beneficiaries under the contract with respect to use of the funds and the satisfactory performance of the programs, functions, services and activities funded under the contract. The Secretary will continue to discharge the trust responsibilities to protect and conserve the trust resources of Indian tribes and the trust resources of individual Indians.

(5) The Secretary recognizes that tribal decisions to contract or not to contract are equal expressions of self-determination.

(6) The Secretary shall maintain consultation with tribal governments and tribal organizations in the Secretary's budget process relating to programs, functions, services and activities subject to the Act. In addition, on an annual basis, the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31, United States Code).

(7) The Secretary is committed to implementing and fully supporting the policy of Indian self-determination by recognizing and supporting the many positive and successful efforts and directions of tribal governments and extending the applicability of this policy to all operational components within the Department. By fully extending Indian self-determination contracting to all operational components within the Department having programs or portions of programs for the benefit of Indians under section 102(a)(1) (A) through (D) and for the benefit of Indians because of their status as Indians under section 102(a)(1)(E), it is the Secretary's intent to support and assist Indian tribes in the development of strong and stable tribal governments capable of administering quality programs that meet the tribally determined needs and directions of their respective communities. It is also the policy of the Secretary to have all other operational components within the Department work cooperatively with tribal governments on a government-to-government basis so as to expedite the transition away from Federal domination of Indian programs and make the ideals of Indian self-government and self-determination a reality.

(8) It is the policy of the Secretary that the contractibility of programs under this Act should be encouraged. In this regard, Federal laws and regulations should be interpreted in a manner that will facilitate the inclusion of those programs or portions of those programs that are for the benefit of Indians under section 102(a)(1) (A) through (D) of the Act, and that are for

the benefit of Indians because of their status of Indians under section 102(a)(1)(E) of the Act.

(9) It is the Secretary's policy that no later than upon receipt of a contract proposal under the Act (or written notice of an Indian tribe or tribal organization's intention to contract), the Secretary shall commence planning such administrative actions, including but not limited to transfers or reductions in force, transfers of property, and transfers of contractible functions, as may be necessary to ensure a timely transfer of responsibilities and funding to Indian tribes and tribal organizations.

(10) It is the policy of the Secretary to make available to Indian tribes and tribal organizations all administrative functions that may lawfully be contracted under the Act, employing methodologies consistent with the methodology employed with respect to such functions under titles III and IV of the Act.

(11) The Secretary's commitment to Indian self-determination requires that these regulations be liberally construed for the benefit of Indian tribes and tribal organizations to effectuate the strong Federal policy of self-determination and, further, that any ambiguities herein be construed in favor of the Indian tribe or tribal organization so as to facilitate and enable the transfer of services, programs, functions, and activities, or portions thereof, authorized by the Act.

§ 900.4 Effect on existing tribal rights.

Nothing in these regulations shall be construed as:

(a) Affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by Indian tribes;

(b) Terminating, waiving, modifying, or reducing the trust responsibility of the United States to the Indian tribe(s) or individual Indians. The Secretary shall act in good faith in upholding this trust responsibility;

(c) Mandating an Indian tribe to apply for a contract(s) or grant(s) as described in the Act; or

(d) Impeding awards by other Departments and agencies of the United States to Indian tribes to administer Indian programs under any other applicable law.

§ 900.5 Effect of these regulations on Federal program guidelines, manual, or policy directives.

Except as specifically provided in the Act, or as specified in subpart J, an Indian tribe or tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Indian tribe or tribal organization and the Secretary, or otherwise required by law.

Subpart B—Definitions

§ 900.6 Definitions.

Unless otherwise provided in this part:

Act means Secs. 1 through 9, and Title I of the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93–638, as amended.

Annual funding agreement means a document that represents the negotiated agreement of the Secretary to fund, on an annual basis, the programs, services, activities and functions transferred to an Indian tribe or tribal organization under the Act.

Appeal means a request by an Indian tribe or tribal organization for an administrative review of an adverse Agency decision.

Awarding official means any person who by appointment or delegation in accordance with applicable regulations has the authority to enter into and administer contracts on behalf of the United States of America and make determinations and findings with respect thereto. Pursuant to the Act, this person can be any Federal official, including but not limited to, contracting officers.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

Contract means a self-determination contract as defined in section 4(j) of the Act.

Contract appeals board means the Interior Board of Contract Appeals.

Contractor means an Indian tribe or tribal organization to which a contract has been awarded.

Days means calendar days; except where the last day of any time period specified in these regulations falls on a Saturday, Sunday, or a Federal holiday, the period shall carry over to the next business day unless otherwise prohibited by law.

Department(s) means the Department of Health and Human Services (HHS) or the Department of the Interior (DOI), or both.

IHS means the Indian Health Service of the Department of Health and Human Services.

Indian means a person who is a member of an Indian Tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indirect cost rate means the rate(s) arrived at through negotiation between an Indian tribe or tribal organization and the appropriate Federal Agency.

Indirect costs means costs incurred for a common or joint purpose benefiting more than one contract objective or which are not readily assignable to the contract objectives specifically benefitted without effort disproportionate to the results achieved.

Initial contract proposal means a proposal for programs, functions, services, or activities that the Secretary is authorized to perform but which the Indian tribe or tribal organization is not now carrying out.

Real property means any interest in land together with the improvements, structures, and fixtures and appurtenances thereto.

Reassumption means rescission, in whole or in part, of a contract and assuming or resuming control or operation of the contracted program by the Secretary without consent of the Indian tribe or tribal organization pursuant to the notice and other procedures set forth in subpart P.

Retrocession means the voluntary return to the Secretary of a contracted program, in whole or in part, for any reason, before the expiration of the term of the contract.

Secretary means the Secretary of Health and Human Services (HHS) or the Secretary of the Interior (DOI), or both (and their respective delegates).

Tribal organization means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided, that, in any case where a contract is let or a grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

Trust resources means an interest in land, water, minerals, funds, or other assets or property which is held by the United States in trust for an Indian tribe or an individual Indian or which is held by an Indian tribe or Indian subject to a restriction on alienation imposed by the United States.

Subpart C—Contract Proposal Contents

§900.7 What technical assistance is available to assist in preparing an initial contract proposal?

The Secretary shall, upon request of an Indian tribe or tribal organization and subject to the availability of appropriations, provide technical assistance on a non-reimbursable basis to such Indian tribe or tribal organization to develop a new contract proposal or to provide for the assumption by the Indian tribe or tribal organization of any program, service, function, or activity (or portion thereof) that is contractible under the Act. The Secretary may also make a grant to an Indian tribe or tribal organization for the purpose of obtaining technical assistance, as provided in section 103 of the Act. An Indian tribe or tribal organization may also request reimbursement

for pre-award costs for obtaining technical assistance under sections 106(a)(2) and (5) of the Act.

§ 900.8 What must an initial contract proposal contain?

An initial contract proposal must contain the following information:

(a) The full name, address and telephone number of the Indian tribe or tribal organization proposing the contract.

(b) If the tribal organization is not an Indian tribe, the proposal must also include:

(1) A copy of the tribal organization's organizational documents (e.g., charter, articles of incorporation, bylaws, etc.).

(2) The full name(s) of the Indian tribe(s) with which the tribal organization is affiliated.

(c) The full name(s) of the Indian tribe(s) proposed to be served.

(d) A copy of the authorizing resolution from the Indian tribe(s) to be served.

(1) If an Indian tribe or tribal organization proposes to serve a specified geographic area, it must provide authorizing resolution(s) from all Indian tribes located within the specific area it proposes to serve. However, no resolution is required from an Indian tribe located outside the area proposed to be served whose members reside within the proposed service area.

(2) If a currently effective authorizing resolution covering the scope of an initial contract proposal has already been provided to the agency receiving the proposal, a reference to that resolution.

(e) The name, title, and signature of the authorized representative of the Indian tribe or tribal organization submitting the contract proposal.

(f) The date of submission of the proposal.

(g) A brief statement of the programs, functions, services, or activities that the tribal organization proposes to perform, including:

(1) A description of the geographical service area, if applicable, to be served.

(2) The estimated number of Indian people who will receive the benefits or services under the proposed contract.

(3) An identification of any local, Area, regional, or national level departmental programs, functions, services, or activities to be contracted, including administrative functions.

(4) A description of the proposed program standards;

(5) An identification of the program reports, data and financial reports that the Indian tribe or tribal organization will provide, including their frequency.

(6) A description of any proposed redesign of the programs, services, functions, or activities to be contracted,

(7) Minimum staff qualifications proposed by the Indian tribe and tribal organization, if any; and

(8) A statement that the Indian tribe or tribal organization will meet the minimum procurement, property and financial management standards set forth in subpart F, subject to any waiver that may have been granted under subpart K.

(h) The amount of funds requested, including:

(1) An identification of the funds requested by programs, functions, services, or activities, under section 106(a)(1) of the Act, including the Indian tribe or tribal organization's share of funds related to such programs, functions, services, or activities, if any, from any Departmental local, area, regional, or national level.

(2) An identification of the amount of direct contract support costs, including one-time start-up or preaward costs under section 106(a)(2) and related provisions of the Act, presented by major categories such as:

(i) Personnel (differentiating between salary and fringe benefits);

(ii) Equipment;

(iii) Materials and supplies;

(iv) Travel;

(v) Subcontracts; and

(vi) Other appropriate items of cost.

(3) An identification of funds the Indian tribe or tribal organization requests to recover for indirect contract support costs. This funding request must include either:

(i) A copy of the most recent negotiated indirect cost rate agreement; or

(ii) An estimated amount requested for indirect costs, pending timely establishment of a rate or negotiation of administrative overhead costs.

(4) To the extent not stated elsewhere in the budget or previously reported to the Secretary, any preaward costs, including the amount and time period covered or to be covered; and

(5) At the option of the Indian tribe or tribal organization, an identification of programs, functions, services, or activities specified in the contract proposal which will be funded from sources other than the Secretary.

(i) The proposed starting date and term of the contract.

(j) In the case of a cooperative agreement, the nature and degree of Federal programmatic involvement anticipated during the term of the agreement.

(k) The extent of any planned use of Federal personnel and Federal resources.

(l) Any proposed waiver(s) of the regulations in this part; and

(m) A statement that the Indian tribe or tribal organization will implement procedures appropriate to the programs, functions, services or activities proposed to be contracted, assuring the confidentiality of medical records and of information relating to the financial affairs of individual Indians obtained under the proposal contract, or as otherwise required by law.

§900.9 May the Secretary require an Indian tribe or tribal organization to submit any other information beyond that identified in §900.8?

No.

§900.10 How does an Indian tribe or tribal organization secure a list of all Federal property currently in use in carrying out the programs, functions, services, or activities that benefit the Indian tribe or tribal organization to assist in negotiating a contract?

The Indian tribe or tribal organization submits a written request to the Secretary. The Secretary shall provide the requested information, including the condition of the property, within 60 days.

§900.11 What should an Indian tribe or tribal organization that is proposing a contract do about specifying the Federal property that the Indian tribe or tribal organization may wish to use in carrying out the contract?

The Indian tribe or tribal organization is encouraged to provide the Secretary, as early as possible, with:

(a) A list of the following Federal property intended for use under the contract:

(1) Equipment;

(2) Furnishings;

(3) Facilities; and

(4) Other real and personal property.

(b) A statement of how the Indian tribe or tribal organization will obtain each item by transfer of title under section 105(f)(2) of the Act and section 1(b)(8) of the model agreement set forth in section 108(c) of the Act, through a temporary use permit, similar arrangement, or otherwise; and

(c) Where equipment is to be shared by contracted and non-contracted programs, services, functions, or activities, a proposal outlining proposed equipment sharing or other arrangements.

§900.12 Are the proposal contents requirements the same for renewal of a contract that is expiring and for securing an annual funding agreement after the first year of the funding agreement?

No. In these situations, an Indian tribe or tribal organization should submit a renewal proposal (or notification of intent not to renew) or an annual funding agreement proposal at least 90 days before the expiration date of the contract or existing annual funding agreement. The proposal shall provide funding information in the same detail and format as the original proposal and may also identify any significant proposed changes.

§900.13 Does the contract proposal become part of the final contract?

No, unless the parties agree.

Subpart D—Review and Approval of Contract Proposals

§ 900.14 What does this subpart cover?

This subpart covers any proposal to enter into a self-determination contract, to amend an existing self-determination contract, to renew an existing self-determination contract, or to redesign a program through a self-determination contract.

§ 900.15 What shall the Secretary do upon receiving a proposal?

Upon receipt of a proposal, the Secretary shall:

(a) Within two days notify the applicant in writing that the proposal has been received;

(b) Within 15 days notify the applicant in writing of any missing items required by § 900.8 and request that the items be submitted within 15 days of receipt of the notification; and

(c) Review the proposal to determine whether there are declination issues under section 102(a)(2) of the Act.

§ 900.16 How long does the Secretary have to review and approve the proposal and award the contract, or decline a proposal?

The Secretary has 90 days after receipt of a proposal to review and approve the proposal and award the contract or decline the proposal in compliance with section 102 of the Act and subpart E. At any time during the review period the Secretary may approve the proposal and award the requested contract.

§ 900.17 Can the statutory 90-day period be extended?

Yes, with written consent of the Indian tribe or tribal organization. If consent is not given, the 90-day deadline applies.

§ 900.18 What happens if a proposal is not declined within 90 days after it is received by the Secretary?

A proposal that is not declined within 90 days (or within any agreed extension under § 900.17) is deemed approved and the Secretary shall award the contract or any amendment or renewal within that 90-day period and add to the contract the full amount of funds pursuant to section 106(a) of the Act.

§ 900.19 What happens when a proposal is approved?

Upon approval the Secretary shall award the contract and add to the contract the full amount of funds to which the contractor is entitled under section 106(a) of the Act.

Subpart E—Declination Procedures

§ 900.20 What does this subpart cover?

This subpart explains how and under what circumstances the Secretary may decline a proposal to contract, to amend an existing contract, to renew an existing contract, to redesign a program, or to waive any provisions of these regulations. For annual funding agreements, see § 900.32.

§ 900.21 When can a proposal be declined?

As explained in §§ 900.16 and 900.17, a proposal can only be declined within 90 days after the Secretary receives the proposal, unless that period is extended with the voluntary and express written consent of the Indian tribe or tribal organization.

§ 900.22 For what reasons can the Secretary decline a proposal?

The Secretary may only decline to approve a proposal for one of five specific reasons:

(a) The service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

(b) Adequate protection of trust resources is not assured;

(c) The proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;

(d) The amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act; or

(e) The program, function, service, or activity (or a portion thereof) that is the subject of the proposal is beyond

the scope of programs, functions, services, or activities covered under section 102(a)(1) of the Act because the proposal includes activities that cannot lawfully be carried out by the contractor.

§900.23 Can the Secretary decline a proposal where the Secretary's objection can be overcome through the contract?

No. The Secretary may not decline to enter into a contract with an Indian tribe or tribal organization based on any objection that will be overcome through the contract.

§900.24 Can a contract proposal for an Indian tribe or tribal organization's share of administrative programs, functions, services, and activities be declined for any reason other than the five reasons specified in §900.22?

No. The Secretary may only decline a proposal based upon one or more of the five reasons listed above. If a contract affects the preexisting level of services to any other tribe, the Secretary shall address that effect in the Secretary's annual report to Congress under section 106(c)(6) of the Act.

§900.25 What if only a portion of a proposal raises one of the five declination criteria?

The Secretary must approve any severable portion of a proposal that does not support a declination finding described in §900.20, subject to any alteration in the scope of the proposal that the Secretary and the Indian tribe or tribal organization approve.

§900.26 What happens if the Secretary declines a part of a proposal on the ground that the proposal proposes in part to plan, conduct, or administer a program, function, service or activity that is beyond the scope of programs covered under section 102(a) of the Act, or proposes a level of funding that is in excess of the applicable level determined under section 106(a) of the Act?

In those situations the Secretary is required, as appropriate, to approve the portion of the program, function, service, or activity that is authorized under section 102(a) of the Act, or approve a level of funding that is authorized under section 106(a) of the Act. As noted in §900.25, the approval is subject to any alteration in the scope of the proposal that the Secretary and the Indian tribe or tribal organization approve.

§900.27 If an Indian tribe or tribal organization elects to contract for a severable portion of a proposal, does the Indian tribe or tribal organization lose its appeal rights to challenge the portion of the proposal that was declined?

No, but the hearing and appeal procedures contained in these regulations only apply to the portion of the proposal that was declined.

§900.28 Is technical assistance available to an Indian tribe or tribal organization to avoid declination of a proposal?

Yes. In accordance with section 103(d) of the Act, upon receiving a proposal, the Secretary shall provide any necessary requested technical assistance to an Indian tribe or tribal organization, and shall share all relevant information with the Indian tribe or tribal organization, in order to avoid declination of the proposal.

§900.29 What is the Secretary required to do if the Secretary decides to decline all or a portion of a proposal?

If the Secretary decides to decline all or a severable portion of a proposal, the Secretary is required:

(a) To advise the Indian tribe or tribal organization in writing of the Secretary's objections, including a specific finding that clearly demonstrates that (or that is supported by a controlling legal authority that) one of the conditions set forth in §900.22 exists, together with a detailed explanation of the reason for the decision to decline the proposal and, within 20 days, any documents relied on in making the decision; and

(b) To advise the Indian tribe or tribal organization in writing of the rights described in §900.31.

§ 900.30 When the Secretary declines all or a portion of a proposal, is the Secretary required to provide an Indian tribe or tribal organization with technical assistance?

Yes. The Secretary shall provide additional technical assistance to overcome the stated objections, in accordance with section 102(b) of the Act, and shall provide any necessary requested technical assistance to develop any modifications to overcome the Secretary's stated objections.

§ 900.31 When the Secretary declines all or a portion of a proposal, is an Indian tribe or tribal organization entitled to any appeal?

Yes. The Indian tribe or tribal organization is entitled to an appeal on the objections raised by the Secretary, with an agency hearing on the record, and the right to engage in full discovery relevant to any issue raised in the matter. The procedures for appeals are in subpart L of these regulations. Alternatively, at its option the Indian tribe or tribal organization has the right to sue in Federal district court to challenge the Secretary's decision.

§ 900.32 Can the Secretary decline an Indian tribe or tribal organization's proposed successor annual funding agreement?

No. If it is substantially the same as the prior annual funding agreement (except for funding increases included in appropriations acts or funding reductions as provided in section 106(b) of the Act) and the contract is with DHHS or the BIA, the Secretary shall approve and add to the contract the full amount of funds to which the contractor is entitled, and may not decline, any portion of a successor annual funding agreement. Any portion of an annual funding agreement proposal which is not substantially the same as that which was funded previously (e.g., a redesign proposal; waiver proposal; different proposed funding amount; or different program, service, function, or activity), or any annual funding agreement proposal which pertains to a contract with an agency of DOI other than the BIA, is subject to the declination criteria and procedures in subpart E. If there is a disagreement over the availability of appropriations, the Secretary may decline the proposal in part under the procedure in subpart E.

§ 900.33 Are all proposals to renew term contracts subject to the declination criteria?

Department of Health and Human Services and the Bureau of Indian Affairs will not review the renewal of a term contract for declination issues where no material and substantial change to the scope or funding of a program, functions, services, or activities has been proposed by the Indian tribe or tribal organization. Proposals to renew term contracts with DOI agencies other than the Bureau of Indian Affairs may be reviewed under the declination criteria.

Subpart F—Standards for Tribal or Tribal Organization Management Systems

GENERAL

§ 900.35 What is the purpose of this subpart?

This subpart contains the minimum standards for the management systems used by Indian tribes or tribal organizations when carrying out self-determination contracts. It provides standards for an Indian tribe or tribal organization's financial management system, procurement management system, and property management system.

§ 900.36 What requirements are imposed upon Indian tribes or tribal organizations by this subpart?

When carrying out self-determination contracts, Indian tribes and tribal organizations shall develop, implement, and maintain systems that meet these minimum standards, unless one or more of the standards have been waived, in whole or in part, under section 107(e) of the Act and subpart K.

§ 900.37 What provisions of Office of Management and Budget (OMB) circulars or the "common rule" apply to self-determination contracts?

The only provisions of OMB Circulars and the only provisions of the ''common rule'' that apply to self-determination contracts are the provisions

adopted in these regulations, those expressly required or modified by the Act, and those negotiated and agreed to in a self-determination contract.

§900.38 Do these standards apply to the subcontractors of an Indian tribe or tribal organization carrying out a self-determination contract?

An Indian tribe or tribal organization may require that some or all of the standards in this subpart be imposed upon its subcontractors when carrying out a self-determination contract.

§900.39 What is the difference between a standard and a system?

(a) Standards are the minimum baseline requirements for the performance of an activity. Standards establish the ''what'' that an activity should accomplish.

(b) Systems are the procedural mechanisms and processes for the day-to-day conduct of an activity. Systems are ''how'' the activity will be accomplished.

§900.40 When are Indian tribe or tribal organization management standards and management systems evaluated?

(a) Management standards are evaluated by the Secretary when the Indian tribe or tribal organization submits an initial contract proposal.

(b) Management systems are evaluated by an independent auditor through the annual single agency audit report that is required by the Act and OMB Circular A–128.

§900.41 How long must an Indian tribe or tribal organization keep management system records?

The Indian tribe or tribal organization must retain financial, procurement and property records for the minimum periods described below. Electronic, magnetic or photographic records may be substituted for hard copies.

(a) *Financial records.* Financial records include documentation of supporting costs incurred under the contract. These records must be retained for three years from the date of submission of the single audit report to the Secretary.

(b) *Procurement records.* Procurement records include solicitations, purchase orders, contracts, payment histories and records applicable of significant decisions. These records must be retained for three years after the Indian tribe or tribal organization or subcontractors make final payment and all other pending matters are closed.

(c) *Property management records.* Property management records of real and personal property transactions must be retained for three years from the date of disposition, replacement, or transfer.

(d) *Litigation, audit exceptions and claims.* Records pertaining to any litigation, audit exceptions or claims requiring management systems data must be retained until the action has been completed.

STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS

§900.42 What are the general financial management system standards that apply to an Indian tribe carrying out a self-determination contract?

An Indian tribe shall expend and account for contract funds in accordance with all applicable tribal laws, regulations, and procedures.

§900.43 What are the general financial management system standards that apply to a tribal organization carrying out a self-determination contract?

A tribal organization shall expend and account for contract funds in accordance with the procedures of the tribal organization.

§900.44 What minimum general standards apply to all Indian tribe or tribal organization financial management systems when carrying out a self-determination contract?

The fiscal control and accounting procedures of an Indian tribe or tribal organization shall be sufficient to:

(a) Permit preparation of reports required by a self-determination contract and the Act; and

(b) Permit the tracing of contract funds to a level of expenditure adequate to establish that they have not been used in violation of any restrictions or prohibitions contained in any

statute that applies to the self-determination contract.

§ 900.45 What specific minimum requirements shall an Indian tribe or tribal organization's financial management system contain to meet these standards?

An Indian tribe or tribal organization's financial management system shall include provisions for the following seven elements.

(a) *Financial reports.* The financial management system shall provide for accurate, current, and complete disclosure of the financial results of self-determination contract activities. This includes providing the Secretary a completed Financial Status Report, SF 269A, as negotiated and agreed to in the self-determination contract.

(b) *Accounting records.* The financial management system shall maintain records sufficiently detailed to identify the source and application of self-determination contract funds received by the Indian tribe or tribal organization. The system shall contain sufficient information to identify contract awards, obligations and unobligated balances, assets, liabilities, outlays, or expenditures and income.

(c) *Internal controls.* The financial management system shall maintain effective control and accountability for all self-determination contract funds received and for all Federal real property, personal property, and other assets furnished for use by the Indian tribe or tribal organization under the self-determination contract.

(d) *Budget controls.* The financial management system shall permit the comparison of actual expenditures or outlays with the amounts budgeted by the Indian tribe or tribal organization for each self-determination contract.

(e) *Allowable costs.* The financial management system shall be sufficient to determine the reasonableness, allowability, and allocability of self-determination contract costs based upon the terms of the self-determination contract and the Indian tribe or tribal organization's applicable OMB cost principles, as amended by the Act and these regulations. (The following chart lists certain OMB Circulars and suggests the entities that may use each, but the final selection of the applicable circular may differ from those shown, as agreed to by the Indian tribe or tribal organization and the Secretary. Agreements between an Indian tribe or tribal organization and the Secretary currently in place do not require renegotiation.) Copies of these circulars are available from the Executive Office of the President, Publications Service, 725 17th Street N. W., Washington, D. C. 20503.

Type of tribal organization	Applicable OMB cost circular
Tribal Government	A–87, ''Cost Principles for State, Local and Indian Tribal Governments.''
Tribal private non-profit other than: (1) an institution of higher education, (2) a hospital, or (3) an organization named in OMB Circular A–122 as not subject to that circular.	A–122, ''Cost Principles for Non-Profit Organizations.''
Tribal educational institution	A–21, ''Cost Principles for Educational Institutions.''

(f) *Source documentation.* The financial management system shall contain accounting records that are supported by source documentation, e.g., canceled checks, paid bills, payroll records, time and attendance records, contract award documents, purchase orders, and other primary records that support self-determination contract fund expenditures.

(g) *Cash management.* The financial management system shall provide for accurate, current, and complete disclosure of cash revenues disbursements, cash-on-hand balances, and obligations by source and application for each Indian tribe or tribal organization, and subcontractor if applicable, so that complete and accurate cash transactions may be prepared as required by the self-determination contract.

§ 900.46 What requirements are imposed upon the Secretary for financial management by these standards?

The Secretary shall establish procedures, consistent with Treasury regulations as modified by the Act, for the transfer of funds from the United States to the Indian tribe or tribal organization in strict compliance with the self-determination contract and the annual funding agreement.

PROCUREMENT MANAGEMENT SYSTEM STANDARDS

§ 900.47 When procuring property or services with self-determination contract funds, can an Indian tribe or tribal organization follow the same procurement policies and procedures applicable to other Indian tribe or tribal organization funds?

Indian tribes and tribal organizations shall have standards that conform to the standards in this subpart. If the Indian tribe or tribal organization relies upon standards different than those described below, it shall identify the standards it will use as a proposed waiver in the initial contract proposal or as a waiver request to an existing contract.

§ 900.48 If the Indian tribe or tribal organization does not propose different standards, what basic standards shall the Indian tribe or tribal organization follow?

(a) The Indian tribe or tribal organization shall ensure that its vendors and/or subcontractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(b) The Indian tribe or tribal organization shall maintain written standards of conduct governing the performance of its employees who award and administer contracts.

(1) No employee, officer, elected official, or agent of the Indian tribe or tribal organization shall participate in the selection, award, or administration of a procurement supported by Federal funds if a conflict of interest, real or apparent, would be involved.

(2) An employee, officer, elected official, or agent of an Indian tribe or tribal organization, or of a subcontractor of the Indian tribe or tribal organization, is not allowed to solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, with the following exemptions. The Indian tribe or tribal organization may exempt a financial interest that is not substantial or a gift that is an unsolicited item of nominal value.

(3) These standards shall also provide for penalties, sanctions, or other disciplinary actions for violations of the standards.

(c) The Indian tribe or tribal organization shall review proposed procurements to avoid buying unnecessary or duplicative items and ensure the reasonableness of the price. The Indian tribe or tribal organization should consider consolidating or breaking out procurement to obtain more economical purchases. Where appropriate, the Indian tribe or tribal organization shall compare leasing and purchasing alternatives to determine which is more economical.

(d) The Indian tribe or tribal organization shall conduct all major procurement transactions by providing full and open competition, to the extent

necessary to assure efficient expenditure of contract funds and to the extent feasible in the local area.

(1) Indian tribes or tribal organizations shall develop their own definition for ''major procurement transactions.''

(2) As provided in sections 7 (b) and (c) of the Act, Indian preference and tribal preferences shall be applied in any procurement award.

(e) The Indian tribe or tribal organization shall make procurement awards only to responsible entities who have the ability to perform successfully under the terms and conditions of the proposed procurement. In making this judgment, the Indian tribe or tribal organization will consider such matters as the contractor's integrity, its compliance with public policy, its record of past performance, and its financial and technical resources.

(f) The Indian tribe or tribal organization shall maintain records on the significant history of all major procurement transactions. These records may include, but are not limited to, the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the contract price.

(g) The Indian tribe or tribal organization is solely responsible, using good administrative practice and sound business judgment, for processing and settling all contractual and administrative issues arising out of a procurement. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

(1) The settlement of any protest, dispute, or claim shall not relieve the Indian tribe or tribal organization of any obligations under a self-determination contract.

(2) Violations of law shall be referred to the tribal or Federal authority having proper jurisdiction.

§900.49 What procurement standards apply to subcontracts?

Each subcontract entered into under the Act shall at a minimum:

(a) Be in writing;

(b) Identify the interested parties, their authorities, and the purposes of the contract;

(c) State the work to be performed under the contract;

(d) State the process for making any claim, the payments to be made, and the terms of the contract, which shall be fixed; and

(e) Be subject to sections 7 (b) and (c) of the Act.

§900.50 What Federal laws, regulations, and Executive Orders apply to subcontractors?

Certain provisions of the Act as well as other applicable Federal laws, regulations, and Executive Orders apply to subcontracts awarded under self-determination contracts. As a result, subcontracts should contain a provision informing the recipient that their award is funded with Indian Self-Determination Act funds and that the recipient is responsible for identifying and ensuring compliance with applicable Federal laws, regulations, and Executive Orders. The Secretary and the Indian tribe or tribal organization may, through negotiation, identify all or a portion of such requirements in the self-determination contract and, if so identified, these requirements should be identified in subcontracts.

PROPERTY MANAGEMENT SYSTEM STANDARDS

§900.51 What is an Indian tribe or tribal organization's property management system expected to do?

An Indian tribe or tribal organization's property management system shall account for all property furnished or transferred by the Secretary for use under a self-determination contract or acquired with contract funds. The property management system shall contain requirements for the use, care, maintenance, and disposition of Federally-owned and other property as follows:

(a) Where title vests in the Indian tribe, in accordance with tribal law and procedures; or

(b) In the case of a tribal organization, according to the internal property procedures of the tribal organization.

§ 900.52 What type of property is the property management system required to track?

The property management system of the Indian tribe or tribal organization shall track:

(a) Personal property with an acquisition value in excess of $5,000 per item;

(b) Sensitive personal property, which is all personal property that is subject to theft and pilferage, as defined by the Indian tribe or tribal organization. All firearms shall be considered sensitive personal property; and

(c) Real property provided by the Secretary for use under the contract.

§ 900.53 What kind of records shall the property management system maintain?

The property management system shall maintain records that accurately describe the property, including any serial number or other identification number. These records should contain information such as the source, titleholder, acquisition date, cost, share of Federal participation in the cost, location, use and condition of the property, and the date of disposal and sale price, if any.

§ 900.54 Should the property management system prescribe internal controls?

Yes. Effective internal controls should include procedures:

(a) For the conduct of periodic inventories;

(b) To prevent loss or damage to property; and

(c) To ensure that property is used for an Indian tribe or tribal organization's self-determination contract(s) until the property is declared excess to the needs of the contract consistent with the Indian tribe or tribal organization's property management system.

§ 900.55 What are the standards for inventories?

A physical inventory should be conducted at least once every 2 years. The results of the inventory shall be reconciled with the Indian tribe or tribal organization's internal property and accounting records.

§ 900.56 What maintenance is required for property?

Required maintenance includes the performance of actions necessary to keep the property in good working condition, the procedures recommended by equipment manufacturers, and steps necessary to protect the interests of the contractor and the Secretary in any express warranties or guarantees covering the property.

§ 900.57 What if the Indian tribe or tribal organization chooses not to take title to property furnished or acquired under the contract?

If the Indian tribe or tribal organization chooses not to take title to property furnished by the government or acquired with contract funds, title to the property remains vested in the Secretary. A list of Federally-owned property to be used under the contract shall be included in the contract.

§ 900.58 Do the same accountability and control procedures described above apply to Federal property?

Yes, except that requirements for the inventory and disposal of Federal property are different.

§ 900.59 How are the inventory requirements for Federal property different than for tribal property?

There are three additional requirements:

(a) The Indian tribe or tribal organization shall conduct a physical inventory of the Federally-owned property and reconcile the results with the Indian tribe or tribal organization's property records annually, rather than every 2 years;

(b) Within 90 days following the end of an annual funding agreement, the Indian tribe or tribal organization shall certify and submit to the Secretary an annual inventory of all Federally-owned real and personal property used in the contracted program; and

(c) The inventory shall report any increase or decrease of $5,000 or more in the value of any item of real property.

§900.60 How does an Indian tribe or tribal organization dispose of Federal personal property?

The Indian tribe or tribal organization shall report to the Secretary in writing any Federally-owned personal property that is worn out, lost, stolen, damaged beyond repair, or no longer needed for the performance of the contract.

(a) The Indian tribe or tribal organization shall state whether the Indian tribe or tribal organization wants to dispose of or return the property.

(b) If the Secretary does not respond within 60 days, the Indian tribe or tribal organization may return the property to the Secretary, who shall accept transfer, custody, control, and responsibility for the property (together with all associated costs).

Subpart G—Programmatic Reports and Data Requirements

§900.65 What programmatic reports and data shall the Indian tribe or tribal organization provide?

Unless required by statute, there are no mandatory reporting requirements. Each Indian tribe or tribal organization shall negotiate with the Secretary the type and frequency of program narrative and program data report(s) which respond to the needs of the contracting parties and that are appropriate for the purposes of the contract. The extent of available resources will be a consideration in the negotiations.

§900.66 What happens if the Indian tribe or tribal organization and the Secretary cannot come to an agreement concerning the type and/or frequency of program narrative and/or program data report(s)?

Any disagreements over reporting requirements are subject to the declination criteria and procedures in section 102 of the Act and subpart E.

§900.67 Will there be a uniform data set for all IHS programs?

IHS will work with Indian tribe or tribal organization representatives to develop a mutually defined uniform subset of data that is consistent with Congressional intent, imposes a minimal reporting burden, and which responds to the needs of the contracting parties.

§900.68 Will this uniform data set be required of all Indian tribe or tribal organizations contracting with the IHS under the Act?

No. The uniform data set, applicable to the services to be performed, will serve as the target for the Secretary and the Indian tribes or tribal organizations during individual negotiations on program data reporting requirements.

Subpart H—Lease of Tribally-Owned Buildings by the Secretary

§900.69 What is the purpose of this subpart?

Section 105(l) of the Act requires the Secretary, at the request of an Indian tribe or tribal organization, to enter into a lease with the Indian tribe or tribal organization for a building owned or leased by the tribe or tribal organization that is used for administration or delivery of services under the Act. The lease is to include compensation as provided in the statute as well as ''such other reasonable expenses that the Secretary determines, by regulation, to be allowable.'' This subpart contains requirements for these leases.

§900.70 What elements are included in the compensation for a lease entered into between the Secretary and an Indian tribe or tribal organization for a building owned or leased by the Indian tribe or tribal organization that is used for administration or delivery of services under the Act?

To the extent that no element is duplicative, the following elements may be included in the lease compensation:

(a) Rent (sublease);

(b) Depreciation and use allowance based on the useful life of the facility based on acquisition costs not financed with Federal funds;

(c) Contributions to a reserve for replacement of facilities;

(d) Principal and interest paid or accrued;

(e) Operation and maintenance expenses, to the extent not otherwise included in rent or use allowances, including, but not limited to, the following:

(1) Water, sewage;

(2) Utilities;

(3) Fuel;

(4) Insurance;

(5) Building management supervision and custodial services;

(6) Custodial and maintenance supplies;

(7) Pest control;

(8) Site maintenance (including snow and mud removal);

(9) Trash and waste removal and disposal;

(10) Fire protection/fire fighting services and equipment;

(11) Monitoring and preventive maintenance of building structures and systems, including but not limited to:

(i) Heating/ventilation/air conditioning;

(ii) Plumbing;

(iii) Electrical;

(iv) Elevators;

(v) Boilers;

(vi) Fire safety system;

(vii) Security system; and

(viii) Roof, foundation, walls, floors.

(12) Unscheduled maintenance;

(13) Scheduled maintenance (including replacement of floor coverings, lighting fixtures, repainting);

(14) Security services;

(15) Management fees; and

(16) Other reasonable and necessary operation or maintenance costs justified by the contractor;

(f) Repairs to buildings and equipment;

(g) Alterations needed to meet contract requirements;

(h) Other reasonable expenses; and

(i) The fair market rental for buildings or portions of buildings and land, exclusive of the Federal share of building construction or acquisition costs, or the fair market rental for buildings constructed with Federal funds exclusive of fee or profit, and for land.

§ 900.71 What type of reserve fund is anticipated for funds deposited into a reserve for replacement of facilities as specified in § 900.70(c)?

Reserve funds must be accounted for as a capital project fund or a special revenue fund.

§ 900.72 Who is the guardian of the fund and may the funds be invested?

(a) The Indian tribe or tribal organization is the guardian of the fund.

(b) Funds may be invested in accordance with the laws, regulations and policies of the Indian tribe or tribal organization subject to the terms of the lease or the self-determination contract.

§ 900.73 Is a lease with the Secretary the only method available to recover the types of cost described in § 900.70?

No. With the exception of paragraph (i) in § 900.70, the same types of costs may be recovered in whole or in part under section 106(a) of the Act as direct or indirect charges to a self-determination contract.

§ 900.74 How may an Indian tribe or tribal organization propose a lease to be compensated for the use of facilities?

There are three options available:

(a) The lease may be based on fair market rental.

(b) The lease may be based on a combination of fair market rental and paragraphs (a) through (h) of § 900.70, provided that no element of expense is duplicated in fair market rental.

(c) The lease may be based on paragraphs (a) through (h) of § 900.70 only.

Subpart I—Property Donation Procedures

GENERAL

§ 900.85 What is the purpose of this subpart?

This subpart implements section 105(f) of the Act regarding donation of Federal excess and surplus property to Indian tribes or tribal organizations

and acquisition of property with funds provided under a self-determination contract or grant.

§ 900.86 How will the Secretary exercise discretion to acquire and donate BIA or IHS excess property and excess and surplus Federal property to an Indian tribe or tribal organization?

The Secretary will exercise discretion in a way that gives maximum effect to the requests of Indian tribes or tribal organizations for donation of BIA or IHS excess property and excess or surplus Federal property, provided that the requesting Indian tribe or tribal organization shall state how the requested property is appropriate for use for any purpose for which a self-determination contract or grant is authorized.

GOVERNMENT-FURNISHED PROPERTY

§ 900.87 How does an Indian tribe or tribal organization obtain title to property furnished by the Federal government for use in the performance of a contract or grant agreement pursuant to section 105(f)(2)(A) of the Act?

(a) For government-furnished personal property made available to an Indian tribe or tribal organization before October 25, 1994:

(1) The Secretary, in consultation with each Indian tribe or tribal organization, shall develop a list of the property used in a self-determination contract.

(2) The Indian tribe or tribal organization shall indicate any items on the list to which the Indian tribe or tribal organization wants the Secretary to retain title.

(3) The Secretary shall provide the Indian tribe or tribal organization with any documentation needed to transfer title to the remaining listed property to the Indian tribe or tribal organization.

(b) For government-furnished real property made available to an Indian tribe or tribal organization before October 25, 1994:

(1) The Secretary, in consultation with the Indian tribe or tribal organization, shall develop a list of the property furnished for use in a self-determination contract.

(2) The Secretary shall inspect any real property on the list to determine the presence of any hazardous substance activity, as defined in 41 CFR 101–47.202.2(b)(10). If the Indian tribe or tribal organization desires to take title to any real property on the list, the Indian tribe or tribal organization shall inform the Secretary, who shall take such steps as necessary to transfer title to the Indian tribe or tribal organization.

(c) For government-furnished real and personal property made available to an Indian tribe or tribal organization on or after October 25, 1994:

(1) The Indian tribe or tribal organization shall take title to all property unless the Indian tribe or tribal organization requests that the United States retain the title.

(2) The Secretary shall determine the presence of any hazardous substance activity, as defined in 41 CFR 101–47.202.2(b)(10).

§ 900.88 What should the Indian tribe or tribal organization do if it wants to obtain title to government-furnished real property that includes land not already held in trust?

If the land is owned by the United States but not held in trust for an Indian tribe or individual Indian, the Indian tribe or tribal organization shall specify whether it wants to acquire fee title to the land or whether it wants the land to be held in trust for the benefit of a tribe.

(a) If the Indian tribe or tribal organization requests fee title, the Secretary shall take the necessary action under Federal law and regulations to transfer fee title.

(b) If the Indian tribe or tribal organization requests beneficial ownership with fee title to be held by the United States in trust for an Indian tribe:

(1) The Indian tribe or tribal organization shall submit with its request a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(2) If the request is submitted to the Secretary of Health and Human Services for land under the jurisdiction of that Secretary, the Secretary shall

take all necessary steps to effect a transfer of the land to the Secretary of the Interior and shall also forward the Indian tribe or tribal organization's request and the tribe's resolution.

(3) The Secretary of the Interior shall expeditiously process all requests in accordance with applicable Federal law and regulations.

(4) The Secretary shall not require the Indian tribe or tribal organization to furnish any information in support of a request other than that required by law or regulation.

§ 900.89 When may the Secretary elect to reacquire government-furnished property whose title has been transferred to an Indian tribe or tribal organization?

(a) Except as provided in paragraph (b) of this section, when a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of government-furnished property:

(1) That title has been transferred to an Indian tribe or tribal organization;

(2) That is still in use in the program; and

(3) That has a current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization in excess of $5,000.

(b) If property referred to in paragraph (a) of this section is shared between one or more ongoing contracts or grant agreements and a contract or grant agreement that is retroceded, reassumed, terminated or expires and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the contractor or grantee using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

§ 900.90 Does government-furnished real property to which an Indian tribe or tribal organization has taken title continue to be eligible for facilities operation and maintenance funding from the Secretary?

Yes.

CONTRACTOR-PURCHASED PROPERTY

§ 900.91 Who takes title to property purchased with funds under a self-determination contract or grant agreement pursuant to section 105(f)(2)(A) of the Act?

The contractor takes title to such property, unless the contractor chooses to have the United States take title. In that event, the contractor must inform the Secretary of the purchase and identify the property and its location in such manner as the contractor and the Secretary deem necessary. A request for the United States to take title to any item of contractor-purchased property may be made at any time. A request for the Secretary to take fee title to real property shall be expeditiously processed in accordance with applicable Federal law and regulation.

§ 900.92 What should the Indian tribe or tribal organization do if it wants contractor-purchased real property to be taken into trust?

The contractor shall submit a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered. If the request to take contractor-purchased real property into trust is submitted to the Secretary of Health and Human Services, that Secretary shall transfer the request to the Secretary of the Interior. The Secretary of the Interior shall expeditiously process all requests in accord with applicable Federal law and regulation.

§ 900.93 When may the Secretary elect to acquire title to contractor-purchased property?

(a) Except as provided in paragraph (b) of this section when a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of government-furnished property:

(1) Whose title has been transferred to an Indian tribe or tribal organization;

(2) That is still in use in the program; and

(3) That has a current fair market value, less the cost of improvements

borne by the Indian tribe or tribal organization, in excess of $5,000.

(b) If property referred to in paragraph (a) of this section is shared between one or more ongoing contracts or grant agreements and a contract or grant agreement that is retroceded, reassumed, terminated or expires and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the contractor or grantee using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

§ 900.94 Is contractor-purchased real property to which an Indian tribe or tribal organization holds title eligible for facilities operation and maintenance funding from the Secretary?

Yes.

BIA AND IHS EXCESS PROPERTY

§ 900.95 What is BIA or IHS excess property?

BIA or IHS excess property means property under the jurisdiction of the BIA or IHS that is excess to the agency's needs and the discharge of its responsibilities.

§ 900.96 How can Indian tribes or tribal organizations learn about BIA and IHS excess property?

The Secretary shall not less than annually send to Indian tribes and tribal organizations a listing of all excess BIA or IHS personal property before reporting the property to GSA or to any other Federal agency as excess. The listing shall identify the agency official to whom a request for donation shall be submitted.

§ 900.97 How can an Indian tribe or tribal organization acquire excess BIA or IHS property?

(a) The Indian tribe or tribal organization shall submit to the appropriate Secretary a request for specific property that includes a statement of how the property is intended for use in connection with a self-determination contract or grant. The Secretary shall expeditiously process the request and shall exercise discretion in a way that gives maximum effect to the request of Indian tribes or tribal organizations for the donation of excess BIA or IHS property.

(b) If more than one request for the same item of personal property is submitted, the Secretary shall award the item to the requestor whose request is received on the earliest date. If two or more requests are received on the same date, the Secretary shall award the item to the requestor with the lowest transportation costs. The Secretary shall make the donation as expeditiously as possible.

(c) If more than one request for the same parcel of real property is submitted, the Secretary shall award the property to the Indian tribe or tribal organization whose reservation or trust land is closest to the real property requested.

§ 900.98 Who takes title to excess BIA or IHS property donated to an Indian tribe or tribal organization?

The Indian tribe or tribal organization takes title to donated excess BIA or IHS property. The Secretary shall provide the Indian tribe or tribal organization with all documentation needed to vest title in the Indian tribe or tribal organization.

§ 900.99 Who takes title to any land that is part of excess BIA or IHS real property donated to an Indian tribe or tribal organization?

(a) If an Indian tribe or tribal organization requests donation of fee title to excess real property that includes land not held in trust for an Indian tribe, the Indian tribe or tribal organization shall so specify in its request for donation. The Secretary shall take the necessary action under Federal law and regulations to transfer the title to the Indian tribe or tribal organization.

(b) If an Indian tribe or tribal organization asks the Secretary to donate excess real property that includes land and requests that fee title to the land be held by the United States in trust for an Indian tribe, the requestor shall submit a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(1) If the donation request is submitted to the Secretary of Health and

Human Services, that Secretary shall take all steps necessary to transfer the land to the Secretary of the Interior with the Indian tribe or tribal organization's request and the Indian tribe's resolution. The Secretary of the Interior shall expeditiously process all requests in accordance with applicable Federal law and regulations.

(2) The Secretary shall not require the Indian tribe or tribal organization to furnish any information in support of a request other than that required by law or regulation.

§ 900.100 May the Secretary elect to reacquire excess BIA or IHS property whose title has been transferred to an Indian tribe or tribal organization?

Yes. When a self-determination contract or grant agreement, or portion—thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of the property;

(a) Except as provided in paragraph (b) of this section when a self-determination contract or grant agreement, or portion thereof, is retroceded, reassumed, terminated, or expires, the Secretary shall have the option to take title to any item of government-furnished property:

(1) Whose title has been transferred to an Indian tribe or tribal organization;

(2) That is still in use in the program; and

(3) That has a current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of $5,000.

(b) To the extent that any property referred to in paragraph (a) of this section is shared between one or more ongoing contracts or grant agreements and a contract or grant agreement that is retroceded, reassumed, terminated or expires and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the contractor or grantee using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

§ 900.101 Is excess BIA or IHS real property to which an Indian tribe or tribal organization has taken title eligible for facilities operation and maintenance funding from the Secretary?

Yes.

EXCESS OR SURPLUS GOVERNMENT PROPERTY OF OTHER AGENCIES

§ 900.102 What is excess or surplus government property of other agencies?

(a) ''Excess government property'' is real or personal property under the control of a Federal agency, other than BIA and IHS, which is not required for the agency's needs and the discharge of its responsibilities.

(b) ''Surplus government property'' means excess real or personal property that is not required for the needs of and the discharge of the responsibilities of all Federal agencies that has been declared surplus by the General Services Administration (GSA).

§ 900.103 How can Indian tribes or tribal organizations learn about property that has been designated as excess or surplus government property?

The Secretary shall furnish, not less than annually, to Indian tribes or tribal organizations listings of such property as may be made available from time to time by GSA or other Federal agencies, and shall obtain listings upon the request of an Indian tribe or tribal organization.

§ 900.104 How may an Indian tribe or tribal organization receive excess or surplus government property of other agencies?

(a) The Indian tribe or tribal organization shall file a request for specific property with the Secretary, and shall state how the property is appropriate for use for a purpose for which a self-determination contract or grant is authorized under the Act.

(b) The Secretary shall expeditiously process such request and shall exercise discretion to acquire the property in the manner described in § 900.86 of this subpart.

(c) Upon approval of the Indian tribe or tribal organization's request, the

Secretary shall immediately request acquisition of the property from the GSA or the holding agency, as appropriate, by submitting the necessary documentation in order to acquire the requested property prior to the expiration of any ''freeze'' placed on the property by the Indian tribe or tribal organization.

(d) The Secretary shall specify that the property is requested for donation to an Indian tribe or tribal organization pursuant to authority provided in section 105(f)(3) of the Act.

(e) The Secretary shall request a waiver of any fees for transfer of the property in accordance with applicable Federal regulations.

§ 900.105 Who takes title to excess or surplus Federal property donated to an Indian tribe or tribal organization?

(a) Title to any donated excess or surplus Federal personal property shall vest in the Indian tribe or tribal organization upon taking possession.

(b) Legal title to donated excess or surplus Federal real property shall vest in the Indian tribe or tribal organization upon acceptance by the Indian tribe or tribal organization of a proper deed of conveyance.

(c) If the donation of excess or surplus Federal real property includes land owned by the United States but not held in trust for an Indian tribe, the Indian tribe or tribal organization shall specify whether it wants to acquire fee title to the land or whether it wants the land to be held in trust for the benefit of an Indian tribe.

(1) If the Indian tribe or tribal organization requests fee title, the Secretary shall take the necessary action under Federal law and regulations to transfer fee title to the Indian tribe or tribal organization.

(2) If the Indian tribe or tribal organization requests beneficial ownership with fee title to be held by the United States in trust for an Indian tribe:

(i) The Indian tribe or tribal organization shall submit with its request a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(ii) If the donation request of the Indian tribe or tribal organization is submitted to the Secretary of Health and Human Services, that Secretary shall take all necessary steps to acquire the land and transfer it to the Secretary of the Interior and shall also forward the Indian tribe or tribal organization's request and the Indian tribe's resolution.

(iii) The Secretary of the Interior shall expeditiously process all requests in accord with applicable Federal law and regulations.

(iv) The Secretary shall not require submission of any information other than that required by Federal law and regulation.

§ 900.106 If a contract or grant agreement or portion thereof is retroceded, reassumed, terminated, or expires, may the Secretary reacquire title to excess or surplus Federal property of other agencies that was donated to an Indian tribe or tribal organization?

No. Section 105(f)(3) of the Act does not give the Secretary the authority to reacquire title to excess or surplus government property acquired from other agencies for donation to an Indian tribe or tribal organization.

PROPERTY ELIGIBLE FOR REPLACEMENT FUNDING

§ 900.107 What property to which an Indian tribe or tribal organization obtains title under this subpart is eligible for replacement funding?

Government-furnished property, contractor-purchased property and excess BIA and IHS property donated to an Indian tribe or tribal organization to which an Indian tribe or tribal organization holds title shall remain eligible for replacement funding to the same extent as if title to that property were held by the United States.

Subpart J—Construction

§ 900.110 What does this subpart cover?

(a) This subpart establishes requirements for issuing fixed-price or cost-reimbursable contracts to provide: design, construction, repair, improvement, expansion, replacement, erection of new space, or demolition and other

related work for one or more Federal facilities. It applies to tribal facilities where the Secretary is authorized by law to design, construct and/or renovate, or make improvements to such tribal facilities.

(b) Activities covered by construction contracts under this subpart are: design and architectural/engineering services, construction project management, and the actual construction of the building or facility in accordance with the construction documents, including all labor, materials, equipment, and services necessary to complete the work defined in the construction documents.

(1) Such contracts may include the provision of movable equipment, telecommunications and data processing equipment, furnishings (including works of art), and special purpose equipment, when part of a construction contract let under this subpart.

(2) While planning services and construction management services as defined in § 900.113 may be included in a construction contract under this subpart, they may also be contracted separately using the model agreement in section 108 of the Act.

§ 900.111 What activities of construction programs are contractible?

The Secretary shall, upon the request of any Indian tribe or tribal organization authorized by tribal resolution, enter into a self-determination contract to plan, conduct, and administer construction programs or portions thereof.

§ 900.112 What are construction phases?

(a) Construction programs generally include the following activities in phases which can vary by funding source (an Indian tribe or tribal organization should contact its funding source for more information regarding the conduct of its program):

(1) *The preplanning phase.* The phase during which an initial assessment and determination of project need is made and supporting information collected for presentation in a project application. This project application process is explained in more detail in § 900.122;

(2) *The planning phase.* The phase during which planning services are provided. This phase can include conducting and preparing a detailed needs assessment, developing justification documents, completing and/or verifying master plans, conducting predesign site investigations and selection, developing budget cost estimates, conducting feasibility studies, and developing a project Program of Requirements (POR);

(3) *The design phase.* The phase during which licensed design professional(s) using the POR as the basis for design of the project, prepare project plans, specifications, and other documents that are a part of the construction documents used to build the project. Site investigation and selection activities are completed in this phase if not conducted as part of the planning phase.

(4) *The construction phase.* The phase during which the project is constructed. The construction phase includes providing the labor, materials, equipment, and services necessary to complete the work in accordance with the construction documents prepared as part of the design phase.

(b) The following activities may be part of phases described in paragraphs (a)(2), (a)(3), and (a)(4) of this section:

(1) Management; and

(2) Environmental, archeological, cultural resource, historic preservation, and similar assessments and associated activities.

§ 900.113 Definitions.

(a) *Construction contract* means a fixed-price or cost-reimbursement self-determination contract for a construction project, except that such term does not include any contract:

(1) That is limited to providing planning services and construction management services (or a combination of such services);

(2) For the Housing Improvement Program or roads maintenance program of the Bureau of Indian Affairs administered by the Secretary of the Interior; or

(3) For the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

(b) *Construction management services* (CMS) means activities limited to administrative support services; coordination; and monitoring oversight of the planning, design, and construction process. An Indian tribe or tribal organization's employee or construction management services consultant (typically an engineer or architect) performs such activities as:

(1) Coordination and information exchange between the Indian tribe or tribal organization and the Federal government;

(2) Preparation of Indian tribe or tribal organization's construction contract proposals;

(3) Indian tribe or tribal organization subcontract scope of work identification and subcontract preparation, and competitive selection of Indian tribe or tribal organization construction contract subcontractors (see § 900.110);

(4) Review of work to ensure compliance with the POR and/or the construction contract. This does not involve construction project management as defined in paragraph (d) of this section.

(c) *Construction programs* include programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including but not limited to, housing, law enforcement and detention facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, water conservation, flood control, and port facilities, and environmental, archeological, cultural resource, historic preservation, and conduct of similar assessments.

(d) *Construction project management* means direct responsibility for the construction project through day-to-day on-site management and administration of the project. Activities may include cost management, project budgeting, project scheduling, procurement services.

(e) *Design* means services performed by licensed design professionals related to preparing drawings, specifications, and other design submissions specified in the contract, as well as services provided by or for licensed design professionals during the bidding/negotiating, construction, and operational phases of the project.

(f) *Planning services* means activities undertaken to support agency and/or Congressional funding of a construction project. Planning services may include performing a needs assessment, completing and/or verifying master plans, developing justification documents, conducting pre-design site investigations, developing budget cost estimates, conducting feasibility studies as needed and completion of approved justification documents and a program of requirements (POR) for the project.

(g) *Program of Requirements* (POR) is a planning document developed during the planning phase for an individual project. It provides background about the project; site information; programmatic needs; and, for facilities projects, a detailed room-by-room listing of spaces, including net and gross sizes, finish materials to be used, furnishings and equipment, and other information and design criteria on which to base the construction project documents.

(h) *Scope of work* means the description of the work to be provided through a contract issued under this subpart and the methods and processes to be used to accomplish that work. A scope of work is typically developed based on criteria provided in a POR during the design phase, and project construction documents (plans and specifications) during the construction phase.

§ 900.114 Why is there a separate subpart in these regulations for construction contracts and grants?

There is a separate subpart because the Act differentiates between construction contracts and the model agreement in section 108 of the Act which is required for contracting other activities. Construction contracts are separately defined in the Act and are subject to a separate proposal and review process.

§ 900.115 How do self-determination construction contracts relate to ordinary Federal procurement contracts?

(a) A self-determination construction contract is a government-to-government agreement that transfers control of the construction project, including

administrative functions, to the contracting Indian tribe or tribal organization to facilitate effective and meaningful participation by the Indian tribe or tribal organization in planning, conducting, and administering the construction project, and so that the construction project is responsive to the true needs of the Indian community. The Secretary's role in the conduct of a contracted construction project is limited to the Secretary's responsibilities set out in § 900.131.

(b) Self-determination construction contracts are not traditional ''procurement'' contracts.

(1) With respect to a construction contract (or a subcontract of such a construction contract), the provisions of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and the regulations promulgated under that Act, shall apply to a construction contract or subcontract only to the extent that application of the provision is:

(i) Necessary to ensure that the contract may be carried out in a satisfactory manner;

(ii) Directly related to the construction activity; and

(iii) Not inconsistent with the Act.

(2) A list of the Federal requirements that meet the requirements of this paragraph shall be included in an attachment to the contract under negotiations between the Secretary and the Indian tribe or tribal organization.

(3) Except as provided in paragraph (b)(2) of this section, no Federal law listed in section 105(3)(C)(ii) of the Act or any other provision of Federal law (including an Executive order) relating to acquisition by the Federal government shall apply to a construction contract that an Indian tribe or tribal organization enters into under this Act, unless expressly provided in the law.

(c) Provisions of a construction contract under this subpart shall be liberally construed in favor of the contracting Indian tribe or tribal organization.

§ 900.116 Are negotiated fixed-price contracts treated the same as cost-reimbursable contracts?

Yes, except that in negotiated fixed-price construction contracts, appropriate clauses shall be negotiated to allocate properly the contract risks between the government and the contractor.

§ 900.117 Do these "construction contract" regulations apply to planning services?

(a) These regulations apply to planning services contracts only as provided in this section.

(1) The Indian tribe or tribal organization shall submit to the Secretary for review and approval the POR documents produced as a part of a model contract under section 108 of the Act or under a construction contract under this subpart.

(i) Within 60 days after receipt of the POR from the Indian tribe or tribal organization for a project that has achieved priority ranking or that is funded, the Secretary shall:

(A) Approve the POR;

(B) Notify the Indian tribe or tribal organization of and make available any objections to the POR that the Secretary may have; or

(C) Notify the Indian tribe or tribal organization of the reasons why the Secretary will be unable either to approve the POR or to notify the Indian tribe or tribal organization of any objections within 60 days, and state the time within which the notification will be made, provided that the extended time shall not exceed 60 additional days.

(ii) Within a maximum of 180 days after receipt of a POR from an Indian tribe or tribal organization for a project that is not funded and is not described in paragraph (a)(1)(i) of this section, the Secretary shall:

(A) Approve the POR; or

(B) Notify the Indian tribe or tribal organization of and make available any objections to the POR; or

(C) Notify the Indian tribe or tribal organization of the reasons why the Secretary will be unable either to approve the POR or to notify the Indian tribe or tribal organization of any objections within 180 days, and state the time within which the notification will be made, provided that the extended time shall not exceed 60 additional days.

(2) Any failure of the Secretary to act on a POR within the applicable period required in paragraph (a)(1) of this section will be deemed a rejection of the POR and will authorize the commencement of any appeal as provided in section 110 of the Act, or, if a model agreement under section 108 of the Act is used, the disputes provision of that agreement.

(3) If an Indian tribe or tribal organization elects to provide planning services as part of a construction contract rather than under a model agreement as set out in section 108 of the Act, the regulations in this subpart shall apply.

(b) The parties to the contract are encouraged to consult during the development of the POR and following submission of the POR to the Secretary.

§ 900.118 Do these "construction contract" regulations apply to construction management services?

No. Construction management services may be contracted separately under section 108 of the Act. Construction management services consultants and/or Indian tribe or tribal organization employees assist and advise the Indian tribe or tribal organization to implement construction contracts, but have no contractual relationship with or authority to direct construction contract subcontractors.

(a) If the Indian tribe or tribal organization chooses to contract solely for construction management services, these services shall be limited to:

(1) Coordination and exchange of information between the Indian tribe or tribal organization and the Secretary;

(2) Review of work produced by the Secretary to determine compliance with:

(i) The POR and design contract during the design stage; or

(ii) The project construction documents during the construction stage;

(3) Disputes shall be resolved in accordance with the disputes clause of the CMS contract.

(b) If the Indian tribe or tribal organization conducts CMS under section 108 of the Act and the Indian tribe or tribal organization contracts separately under this subpart for all or some of the activities in § 900.110, the contracted activities shall be limited to:

(1) Coordination and exchange of information between the Indian tribe or tribal organization and Secretary;

(2) Preparation of tribal or tribal organization construction subcontract scope of work identification and subcontract preparation, and competitive selection of tribal or tribal organization construction contract subcontractors;

(3) Review of work produced by tribal or tribal organization construction subcontractors to determine compliance with:

(i) The POR and the design contract during the design stage; or

(ii) The project construction documents during the construction stage.

§ 900.119 To what extent shall the Secretary consult with affected Indian tribes before spending funds for any construction project?

Before spending any funds for a planning, design, construction, or renovation project, whether subject to a competitive application and ranking process or not, the Secretary shall consult with any Indian tribe or tribal organization(s) that would be significantly affected by the expenditure to determine and to follow tribal preferences to the greatest extent feasible concerning: size, location, type, and other characteristics of the project.

§ 900.120 How does an Indian tribe or tribal organization find out about a construction project?

Within 30 days after the Secretary's allocation of funds for planning phase, design phase, or construction phase activities for a specific project, the Secretary shall notify, by registered mail with return receipt in order to document mailing, the Indian tribe or tribal organization(s) to be benefitted by the availability of the funds for each phase of a project. The Secretarial notice of fund allocation shall offer technical assistance in the preparation of a contract proposal.

(a) The Secretary shall, within 30 days after receiving a request from an Indian tribe or tribal organization, furnish the Indian tribe or tribal organization with all information available to

the Secretary about the project including, but not limited to: construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments, or environmental impact reports and archeological reports.

(b) An Indian tribe or tribal organization is not required to request this information prior to submitting a notification of intent to contract or a contract proposal.

(c) The Secretary shall have a continuing responsibility to furnish information.

§ 900.121 What happens during the preplanning phase and can an Indian tribe or tribal organization perform any of the activities involved in this process?

(a) The application and ranking process for developing a priority listing of projects varies between agencies. There are, however, steps in the selection process that are common to most selection processes. An Indian tribe or tribal organization that wishes to secure a construction project should contact the appropriate agency to determine the specific steps involved in the application and selection process used to fund specific types of projects. When a priority process is used in the selection of construction projects, the steps involved in the application and ranking process are as follows:

(1) *Application*. The agency solicits applications from Indian tribes or tribal organizations. In the request for applications, the Secretary provides specific information regarding the type of project to be funded, the objective criteria that will be used to evaluate applications, the points or weight that each criterion will be assigned, and the time when applications are due. An Indian tribe or tribal organization may prepare the application (technical assistance from the agency, within resources available, shall be provided upon request from an Indian tribe or tribal organization) or may rely upon the agency to prepare the application.

(2) *Ranking/Prioritization*. The Secretary evaluates the applications based on the criteria provided as part of the application preparation process. The Secretary applies only criteria and weights assigned to each criteria that were disclosed to the Indian tribe or tribal organization during the application stage. The applications are then ranked in order from the application that best meets application criteria to the application that least meet the application criteria.

(3) *Validation*. Before final acceptance of a ranked application, the information, such as demographic information, deficiency levels reported in application, the condition of existing facilities, and program housing needs, is validated. During this process, additional information may be developed by the Indian tribe or tribal organization in support of the original information or the Secretary may designate a representative of the Department to conduct an on-site review of the information contained in the application.

(b) [Reserved]

§ 900.122 What does an Indian tribe or tribal organization do if it wants to secure a construction contract?

(a) The Act establishes a special process for review and negotiation of proposals for construction contracts which is different than that for other self-determination contract proposals. The Indian tribe or tribal organization should notify the Secretary of its intent to contract. After notification, the Indian tribe or tribal organization should prepare its contract proposal in accordance with the sections of this subpart. While developing its construction contract proposal, the Indian tribe or tribal organization can request technical assistance from the Secretary. Not later than 30 days after receiving a request from an Indian tribe or tribal organization, the Secretary shall provide to the Indian tribe or tribal organization all information available about the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments, or environmental impact reports, and archaeological reports. The responsibility of the Secretary to furnish this information shall be a continuing one.

(b) At the request of the Indian tribe or tribal organization and before finalizing its construction contract proposal, the Secretary shall provide for a

precontract negotiation phase during the development of a contract proposal. Within 30 days the Secretary shall acknowledge receipt of the proposal and, if requested by the Indian tribe or tribal organization, shall confer with the Indian tribe or tribal organization to develop a negotiation schedule. The negotiation phase shall include, at a minimum:

(1) The provision of technical assistance under section 103 of the Act and paragraph (a) of this section;

(2) A joint scoping session between the Secretary and the Indian tribe or tribal organization to review all plans, specifications, engineering reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement;

(3) An opportunity for the Secretary to revise plans, designs, or cost estimates of the Secretary in response to concerns raised, or information provided by, the Indian tribe or tribal organization;

(4) A negotiation session during which the Secretary and the Indian tribe or tribal organization shall seek to develop a mutually agreeable contract proposal; and

(5) Upon the request of the Indian tribe or tribal organization, the use of alternative dispute resolution to resolve remaining areas of disagreement under the dispute resolution provisions under subchapter IV of chapter 5 of the United States Code.

§ 900.123 What happens if the Indian tribe or tribal organization and the Secretary cannot develop a mutually agreeable contract proposal?

(a) If the Secretary and the Indian tribe or tribal organization are unable to develop a mutually agreeable construction contract proposal under the procedures in § 900.122, the Indian tribe or tribal organization may submit a final contract proposal to the Secretary. Not later than 30 days after receiving the final contract proposal, the Secretary shall approve the contract proposal and award the contract, unless, during the period the Secretary declines the proposal under sections 102(a)(2) and 102(b) of the Act (including providing opportunity for an appeal under section 102(b)).

(b) Whenever the Secretary declines to enter into a self-determination contract or contracts under section 102(a)(2) of the Act, the Secretary shall:

(1) State any objections to the contract proposal (as submitted by the Indian tribe or tribal organization) in writing and provide all documents relied on in making the declination decision within 20 days of such decision to the Indian tribe or tribal organization;

(2) Provide assistance to the Indian tribe or tribal organization to overcome the stated objections;

(3) Provide the Indian tribe or tribal organization with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under the regulations set forth in subpart L, except that the Indian tribe or tribal organization may, in lieu of filing the appeal, initiate an action in a Federal district court and proceed directly under section 110(a) of the Act.

§ 900.124 May the Indian tribe or tribal organization to use a grant in lieu of a contract?

Yes. A grant agreement or a cooperative agreement may be used in lieu of a contract under sections 102 and 103 of the Act when agreed to by the Secretary and the Indian tribe or tribal organization. Under the grant concept, the grantee will assume full responsibility and accountability for design and construction performance within the funding limitations. The grantee will manage and administer the work with minimal involvement by the government. The grantee will be expected to have acceptable management systems for finance, procurement, and property. The Secretary may issue Federal construction guidelines and manuals applicable to its construction programs, and the government shall accept tribal proposals for alternatives which are consistent with or exceed Federal guidelines or manuals applicable to construction programs.

§ 900.125 What shall a construction contract proposal contain?

(a) In addition to the full name, address, and telephone number of the Indian tribe or tribal organization submitting the construction proposal, a construction contract proposal shall contain descriptions of the following standards under which they propose to operate the contract:

(1) The use of licensed and qualified architects;

(2) Applicable health and safety standards;

(3) Adherence to applicable Federal, State, local, or tribal building codes and engineering standards;

(4) Structural integrity;

(5) Accountability of funds;

(6) Adequate competition for subcontracting under tribal or other applicable law;

(7) The commencement, performance, and completion of the contract;

(8) Adherence to project plans and specifications (including any applicable Federal construction guidelines and manuals and the Secretary shall accept tribal proposals for alternatives which are consistent with or exceed Federal guidelines or manuals applicable to construction programs);

(9) The use of proper materials and workmanship;

(10) Necessary inspection and testing;

(11) With respect to the self-determination contract between the Indian tribe or tribal organization and Federal government, a process for changes, modifications, stop work, and termination of the work when warranted;

(b) In addition to provisions regarding the program standards listed in paragraph (a) of this section or the assurances listed in paragraph (c) of this section, the Indian tribe or tribal organization shall also include in its construction contract proposal the following:

(1) In the case of a contract for design activities, this statement, ''Construction documents produced as part of this contract will be produced in accordance with the Program of Requirements and/or Scope of Work,'' and the POR and/or Scope of Work shall be attached to the contract proposal. If tribal construction procedures, standards and methods (including national, regional, state, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards then the Secretary shall accept the tribally proposed standards; and

(2) In the case of a contract for construction activities, this statement, ''The facility will be built in accordance with the construction documents produced as a part of design activities. The project documents, including plans and specifications, are hereby incorporated into this contract through this reference.'' If tribal construction procedures, standards and methods (including national, regional, state, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards then the Secretary shall accept the tribally proposed standards; and

(3) Proposed methods to accommodate the responsibilities of the Secretary provided in § 900.131; and

(4) Proposed methods to accommodate the responsibilities of the Indian tribe or tribal organization provided in § 900.130 unless otherwise addressed in paragraph (a) of this section and minimum staff qualifications proposed by the Indian tribe or tribal organization, if any;

(5) A contract budget as described in § 900.127; and

(6) A period of performance for the conduct of all activities to be contracted;

(7) A payment schedule as described in § 900.132;

(8) A statement indicating whether or not the Indian tribe or tribal organization has a CMS contract related to this project;

(9) Current (unrevoked) authorizing resolutions in accordance with § 900.5(d) from all Indian tribes benefitting from the contract proposal; and

(10) Any responsibilities, in addition to the Federal responsibilities listed in § 900.131, which the Indian tribe or tribal organization proposes the Federal government perform to assist with the completion of the scope of work;

(c) The Indian tribe or tribal organization will provide the following assurances in its contract proposal:

(1) If the Indian tribe or tribal organization elects not to take title (pursuant to subpart I) to Federal property used in carrying out the contract, ''The Indian tribe or tribal organization will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. The Indian tribe or tribal organization will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project''; and

(2) ''The Indian tribe or tribal organization will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.)'' which prohibits the use of lead based paint in construction or rehabilitation of residential structures;

(3) ''The Indian tribe or tribal organization will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646),'' which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal participation in purchases; and

(4) ''Except for work performed by tribal or tribal organization employees, the Indian tribe or tribal organization will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276c and 18 U.S.C. 874),'' for Federally assisted construction subagreements;

(5) ''The Indian tribe or tribal organization will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234),'' which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(6) ''The Indian tribe or tribal organization will comply with all applicable Federal environmental laws, regulations, and Executive Orders;''

(7) ''The Indian tribe or tribal organization will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting the components or potential components of the national wild and scenic rivers system;''

(8) ''The Indian tribe or tribal organization will assist the awarding agency in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).''

(d) The Indian tribe or tribal organization and the Secretary will both make a good faith effort to identify any other applicable Federal laws, Executive Orders, or regulations applicable to the contract, share them with the other party, and refer to them in the construction contract. The parties will make a good faith effort to identify tribal laws, ordinances, and resolutions which may affect either party in the performance of the contract.

§ 900.126 Shall a construction contract proposal incorporate provisions of Federal construction guidelines and manuals?

Each agency may provide or the Indian tribe or tribal organization may request Federal construction guidelines and manuals for consideration by the Indian tribe or tribal organization in the preparation of its contract proposal. If tribal construction procedures, standards and methods (including national, regional, State, or tribal building codes or construction industry standards) are consistent with or exceed applicable Federal standards, the Secretary shall accept the tribally proposed standards.

§ 900.127 What can be included in the Indian tribe or tribal organization's contract budget?

(a) The costs incurred will vary depending on which phase (see § 900.112) of the construction process the Indian tribe or tribal organization is conducting and the type of contract that will be used. The total amount awarded

under a construction contract shall reflect an overall fair and reasonable price to the parties (see § 900.129).

(b) Costs for activities under this subpart that have not been billed, allocated, or recovered under a contract issued under section 108 of the Act should be included.

(c) The Indian tribe or tribal organization's budget should include the cost elements that reflect an overall fair and reasonable price. These costs include:

(1) The reasonable costs to the Indian tribe or tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of the Act and any other applicable law;

(2) The costs of preparing the contract proposal and supporting cost data;

(3) The costs associated with auditing the general and administrative costs of the Indian tribe or tribal organization associated with the management of the construction contract; and

(4) In cases where the Indian tribe or tribal organization is submitting a fixed-price construction contract:

(i) The reasonable costs to the Indian tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract;

(ii) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract, local market conditions, and other relevant considerations.

(d) In establishing a contract budget for a construction project, the Secretary shall not be required to identify separately the components described in paragraphs (c)(4)(i) and (c)(4)(ii) of this section.

(e) The Indian tribe or tribal organization's budget proposal includes a detailed budget breakdown for performing the scope of work including a total ''not to exceed'' dollar amount with which to perform the scope of work. Specific budget line items, if requested by the Indian tribe or tribal organization, can include the following:

(1) The administrative costs the Indian tribe or tribal organization may incur including:

(i) Personnel needed to provide administrative oversight of the contract;

(ii) Travel costs incurred, both local travel incurred as a direct result of conducting the contract and remote travel necessary to review project status with the Secretary;

(iii) Meeting costs incurred while meeting with community residents to develop project documents;

(iv) Fees to be paid to consultants, such as demographic consultants, planning consultants, attorneys, accountants, and personnel who will provide construction management services;

(2) The fees to be paid to architects and engineers to assist in preparing project documents and to assist in oversight of the construction process;

(3) The fees to be paid to develop project surveys including topographical surveys, site boundary descriptions, geotechnical surveys, archeological surveys, and NEPA compliance, and;

(4) In the case of a contract to conduct project construction activities, the fees to provide a part-time or full-time on-site inspector, depending on the terms of the contract, to monitor construction activities;

(5) In the case of a contract to conduct project construction activities, project site development costs;

(6) In the case of a contract to conduct project construction activities, project construction costs including those costs described in paragraph (c)(4), of this section;

(7) The cost of securing and installing moveable equipment, telecommunications and data processing equipment, furnishings, including works of art, and special purpose equipment when part of a construction contract;

(8) A contingency amount for unanticipated conditions of the construction phase of cost-reimbursable contracts. The amount of the contingency provided shall be 3 percent of activities being contracted or 50 percent of the available contingency funds, whichever is greater. In the event provision of required contingency funds will cause the project to exceed available project

funds, the discrepancy shall be reconciled in accordance with § 900.129(e). Any additional contingency funds for the construction phase will be negotiated on an as-needed basis subject to the availability of funds and the nature, scope, and complexity of the project. Any contingency for other phases will be negotiated on a contract-by-contract basis. Unused contingency funds obligated to the contract and remaining at the end of the contract will be considered savings.

(9) Other costs incurred that are directly related to the conduct of contract activities.

§ 900.128 What funding shall the Secretary provide in a construction contract?

The Secretary shall provide an amount under a construction contract that reflects an overall fair and reasonable price to the parties. These costs include:

(a) The reasonable costs to the Indian tribe or tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of the Act and any other applicable law;

(b) The costs of preparing the contract proposal and supporting cost data; and

(c) The costs associated with auditing the general and administrative costs of the tribal organization associated with the management of the construction contract; and

(d) If the Indian tribe or tribal organization is submitting a fixed-price construction contract:

(1) The reasonable costs to the Indian tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract;

(2) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract, local market conditions, and other relevant considerations including but not limited to contingency.

(3) In establishing a contract budget for a construction project, the Secretary is not required to identify separately the components described in paragraph (d) (1) and (d) (2) of this sections.

§ 900.129 How do the Secretary and Indian tribe or tribal organization arrive at an overall fair and reasonable price for the performance of a construction contract?

(a) Throughout the contract award process, the Secretary and Indian tribe or tribal organization shall share all construction project cost information available to them in order to facilitate reaching agreement on an overall fair and reasonable price for the project or part thereof. In order to enhance this communication, the government's estimate of an overall fair and reasonable price shall:

(1) Contain a level of detail appropriate to the nature and phase of the work and sufficient to allow comparisons to the Indian tribe or tribal organization's estimate;

(2) Be prepared in a format coordinated with the Indian tribe or tribal organization; and

(3) Include the cost elements contained in section 105(m)(4) of the Act.

(b) The government's cost estimate shall be an independent cost estimate based on such information as the following:

(1) Prior costs to the government for similar projects adjusted for comparison to the target location, typically in unit costs, such as dollars per pound, square meter cost of building, or other unit cost that can be used to make a comparison;

(2) Actual costs previously incurred by the Indian tribe or tribal organization for similar projects;

(3) Published price lists, to include regional adjustment factors, for materials, equipment, and labor; and

(4) Projections of inflation and cost trends, including projected changes such as labor, material, and transportation costs.

(c) The Secretary shall provide the initial government cost estimate to the Indian tribe or tribal organization and make appropriate revisions based on concerns raised or information provided by the Indian tribe or tribal organization. The Secretary and the Indian tribe or tribal organization shall continue to revise, as appropriate, their respective cost estimates based on

changed or additional information such as the following:

(1) Actual subcontract bids;

(2) Changes in inflation rates and market conditions, including local market conditions;

(3) Cost and price analyses conducted by the Secretary and the Indian tribe or tribal organization during negotiations;

(4) Agreed-upon changes in the size, scope and schedule of the construction project; and

(5) Agreed-upon changes in project plans and specifications.

(d) Considering all of the information available, the Secretary and the Indian tribe or tribal organization shall negotiate the amount of the construction contract. The objective of the negotiations is to arrive at an amount that is fair under current market conditions and reasonable to both the government and the Indian tribe or tribal organization. As a result, the agreement does not necessarily have to be in strict conformance with either party's cost estimate nor does agreement have to be reached on every element of cost, but only on the overall fair and reasonable price of each phase of the work included in the contract.

(e) If the fair and reasonable price arrived at under paragraph (d) of this section would exceed the amount available to the Secretary, then:

(1) If the Indian tribe or tribal organization elects to submit a final proposal, the Secretary may decline the proposal under section 105(m)(4)(C)(v) of the Act or if the contract has been awarded, dispute the matter under the Contract Disputes Act; or

(2) If requested by the Indian tribe or tribal organization:

(i) The Indian tribe or tribal organization and the Secretary may jointly explore methods of expanding the available funds through the use of contingency funds, advance payments in accordance with § 900.132, rebudgeting, or seeking additional appropriations; or

(ii) The Indian tribe or tribal organization may elect to propose a reduction in project scope to bring the project price within available funds; or

(iii) The Secretary and Indian tribe or tribal organization may agree that the project be executed in phases.

§ 900.130 What role does the Indian tribe or tribal organization play during the performance of a self-determination construction contract?

(a) The Indian tribe or tribal organization is responsible for the successful completion of the project in accordance with the approved contract documents.

(b) If the Indian tribe or tribal organization is contracting to perform design phase activities, the Indian tribe or tribal organization shall have the following responsibilities:

(1) The Indian tribe or tribal organization shall subcontract with or provide the services of licensed and qualified architects and other consultants needed to accomplish the self-determination construction contract.

(2) The Indian tribe or tribal organization shall administer and disburse funds provided through the contract in accordance with subpart F, § 900.42 through § 900.45 and implement a property management system in accordance with subpart F, § 900.51 through § 900.60.

(3) The Indian tribe or tribal organization shall direct the activities of project architects, engineers, and other project consultants, facilitate the flow of information between the Indian tribe or tribal organization and its subcontractors, resolve disputes between the Indian tribe or tribal organization and its subcontractors or between its subcontractors, and monitor the work produced by its subcontractors to ensure compliance with the POR.

(4) The Indian tribe or tribal organization shall direct the work of its subcontractors so that work produced is provided in accordance with the contract budget and contract performance period as negotiated between and agreed to by the parties.

(5) The Indian tribe or tribal organization shall provide the Secretary with an opportunity to review and provide written comments on the project plans and specifications only at the concept phase, the schematic phase (or the preliminary design), the design development phase, and the final construction

documents phase and approve the project plans and specifications for general compliance with contract requirements only at the schematic phase (or the preliminary design) and the final construction documents phase or as otherwise negotiated.

(6) The Indian tribe or tribal organization shall provide the Secretary with the plans and specifications after their final review so, if needed, the Secretary may obtain an independent government cost estimate in accordance with § 900.131(b)(4) for the construction of the project.

(7) The Indian tribe or tribal organization shall retain project records and design documents for a minimum of 3 years following completion of the contract.

(8) The Indian tribe or tribal organization shall provide progress reports and financial status reports quarterly, or as negotiated, that contain a narrative of the work accomplished, including but not limited to descriptions of contracts, major subcontracts, and modifications implemented during the report period and A/E service deliverables, the percentage of the work completed, a report of funds expended during the reporting period, and total funds expended for the project. The Indian tribe or tribal organization shall also provide copies, for the information of the Secretary, of an initial work and payment schedule and updates as they may occur.

(c) If the Indian tribe or tribal organization is contracting to perform project construction phase activities, the Indian tribe or tribal organization shall have the following responsibilities:

(1) The Indian tribe or tribal organization shall subcontract with or provide the services of licensed and qualified architects and other consultants as needed to accomplish the self-determination construction contract.

(2) The Indian tribe or tribal organization shall administer and dispense funds provided through the contract in accordance with subpart F, § 900.42 through § 900.45 and implement a property management system in accordance with subpart F, § 900.51 through § 900.60.

(3) The Indian tribe or tribal organization shall subcontract with or provide the services of construction contractors or provide its own forces to conduct construction activities in accordance with the project construction documents or as otherwise negotiated between and agreed to by the parties.

(4) The Indian tribe or tribal organization shall direct the activities of project architects, engineers, construction contractors, and other project consultants, facilitate the flow of information between the Indian tribe or tribal organization and its subcontractors, resolve disputes between itself and its subcontractors or between its subcontractors, and monitor the work produced by its subcontractors to assure compliance with the project plans and specifications.

(5) The Indian tribe or tribal organization shall manage or provide for the management of day-to-day activities of the contract including the issuance of construction change orders to subcontractors except that, unless the Secretary agrees:

(i) The Indian tribe or tribal organization may not issue a change order to a construction subcontractor that will cause the Indian tribe or tribal organization to exceed its self-determination contract budget;

(ii) The Indian tribe or tribal organization may not issue a change order to a construction subcontractor that will cause the Indian tribe or tribal organization to exceed the performance period in its self-determination contract budget; or

(iii) The Indian tribe or tribal organization may not issue to a construction subcontractor a change order that is a significant departure from the scope or objective of the project.

(6) The Indian tribe or tribal organization shall direct the work of its subcontractors so that work produced is provided in accordance with the contract budget and performance period as negotiated between and agreed to by the parties.

(7) The Indian tribe or tribal organization shall provide to the Secretary progress and financial status reports.

(i) The reports shall be provided quarterly, or as negotiated, and shall

contain a narrative of the work accomplished, the percentage of the work completed, a report of funds expended during the reporting period, and total funds expended for the project.

(ii) The Indian tribe or tribal organization shall also provide copies, for the information of the Secretary, of an initial schedule of values and updates as they may occur, and an initial construction schedule and updates as they occur.

(8) The Indian tribe or tribal organization shall maintain on the job-site or project office, and make available to the Secretary during monitoring visits: contracts, major subcontracts, modifications, construction documents, change orders, shop drawings, equipment cut sheets, inspection reports, testing reports, and current redline drawings.

(d) Upon completion of the project, the Indian tribe or tribal organization shall provide to the Secretary a reproducible copy of the record plans and a contract closeout report.

(e) For cost-reimbursable projects, the Indian tribe or tribal organization shall not be obligated to continue performance that requires an expenditure of more funds than were awarded under the contract. If the Indian tribe or tribal organization has a reason to believe that the total amount required for performance of the contract will be greater than the amount of funds awarded, it shall provide reasonable notice to the Secretary. If the Secretary does not increase the amount of funds awarded under the contract, the Indian tribe or tribal organization may suspend performance of the contract until sufficient additional funds are awarded.

§ 900.131 What role does the Secretary play during the performance of a self-determination construction contract?

(a) If the Indian tribe or tribal organization is contracting solely to perform construction management services either under this subpart or section 108 of the Act, the Secretary has the following responsibilities:

(1) The Secretary is responsible for the successful completion of the project in accordance with the approved contract documents. In fulfilling those responsibilities, the Secretary shall consult with the Indian tribe or tribal organization on a regular basis as agreed to by the parties to facilitate the exchange of information between the Indian tribe or tribal organization and Secretary;

(2) The Secretary shall provide the Indian tribe or tribal organization with regular opportunities to review work produced to determine compliance with the following documents:

(i) The POR, during the conduct of design phase activities. The Secretary shall provide the Indian tribe or tribal organization with an opportunity to review the project construction documents at the concept phase, the schematic phase, the design development phase, and the final construction documents phase, or as otherwise negotiated. Upon receipt of project construction documents for review, the Indian tribe or tribal organization shall not take more than 21 days to make available to the Secretary any comments or objections to the construction documents as submitted by the Secretary. Resolution of any comments or objections shall be in accordance with dispute resolution procedures as agreed to by the parties and contained in the contract; or

(ii) The project construction documents, during conduct of the construction phase activities. The Indian tribe or tribal organization shall have the right to conduct monthly or critical milestone on-site monitoring visits or as negotiated with the Secretary;

(b) If the Indian tribe or tribal organization is contracting to perform design and/or construction phase activities, the Secretary shall have the following responsibilities:

(1) In carrying out the responsibilities of this section, and specifically in carrying out review, comment, and approval functions under this section, the Secretary shall provide for full tribal participation in the decision making process and shall honor tribal preferences and recommendations to the greatest extent feasible. This includes promptly notifying the Indian tribe or tribal organization of any concerns or issues in writing that may lead to disapproval, meeting with the Indian tribe

or tribal organization to discuss these concerns and issues and to share relevant information and documents, and making a good faith effort to resolve all issues and concerns of the Indian tribe or tribal organization. The time allowed for Secretarial review, comment, and approval shall be no more than 21 days per review unless a different time period is negotiated and specified in individual contracts. The 21-day time period may be extended if the Indian tribe or tribal organization agrees to the extension in writing. Disagreements over the Secretary's decisions in carrying out these responsibilities shall be handled under subpart N governing contract disputes under the Contract Disputes Act.

(2) To the extent the construction project is subject to NEPA or other environmental laws, the appropriate Secretary shall make the final determination under such laws. All other environmentally related functions are contractible.

(3) If the Indian tribe or tribal organization conducts planning activities under this subpart, the Secretary shall review and approve final planning documents for the project to ensure compliance with applicable planning standards.

(4) When a contract or portion of a contract is for project construction activities, the Secretary may rely on the Indian tribe or tribal organization's cost estimate or the Secretary may obtain an independent government cost estimate that is derived from the final project plans and specifications. The Secretary shall obtain the cost estimate, if any, within 90 days or less of receiving the final plans and specifications from the Indian tribe or tribal organization and shall provide all supporting documentation of the independent cost estimate to the Indian tribe or tribal organization within the 90 day time limit.

(5) If the contracted project involves design activities, the Secretary shall have the authority to review for general compliance with the contract requirements and provide written comments on the project plans and specifications only at the concept phase, the schematic phase, the design development phase and the final construction documents phase, and approve for general compliance with contract requirements the project plans and specifications only at the schematic phase and the final construction documents phase or as otherwise negotiated.

(6) If the contracted project involves design activities, the Secretary reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, for Federal government purposes:

(i) The copyright in any work developed under a contract or subcontract of this subpart; and

(ii) Any rights of copyright to which an Indian tribe or tribal organization or a tribal subcontractor purchases ownership through this contract.

(7) Changes that require an increase to the negotiated contract budget or an increase in the negotiated performance period or are a significant departure from the scope or objective of the project shall require approval of the Secretary.

(8) Review and comment on specific shop drawings as negotiated and specified in individual contracts.

(9) The Secretary may conduct monthly on-site monitoring visits, or alternatively if negotiated with the Indian tribe or tribal organization, critical milestone on-site monitoring visits.

(10) The Secretary retains the right to conduct final project inspections jointly with the Indian tribe or tribal organization and to accept the building or facility. If the Secretary identifies problems during final project inspections the information shall be provide to the Indian tribe or tribal organization and shall be limited to items that are materially noncompliant.

(11) The Secretary can require an Indian tribe or tribal organization to suspend work under a contract in accordance with this paragraph. The Secretary may suspend a contract for no more than 30 days unless the Indian tribe or tribal organization has failed to correct the reason(s) for the suspension or unless the cause of the suspension cannot be resolved through either the efforts of the Secretary or the Indian tribe or tribal organization.

(i) The following are reasons the Secretary may suspend work under a self-

determination contract for construction:

(A) Differing site conditions encountered upon commencement of construction activities that impact health or safety concerns or shall require an increase in the negotiated project budget;

(B) The Secretary discovers materially non-compliant work;

(C) Funds allocated for the project that is the subject of this contract are rescinded by Congressional action; or

(D) Other Congressional actions occur that materially affect the subject matter of the contract.

(ii) If the Secretary wishes to suspend the work, the Secretary shall first provide written notice and an opportunity for the Indian tribe or tribal organization to correct the problem. The Secretary may direct the Indian tribe or tribal organization to suspend temporarily work under a contract only after providing a minimum of 5 working days' advance written notice to the Indian tribe or tribal organization describing the nature of the performance deficiencies or imminent safety, health or environmental issues which are the cause for suspending the work.

(iii) The Indian tribe or tribal organization shall be compensated for reasonable costs, including but not limited to overhead costs, incurred due to any suspension of work that occurred through no fault of the Indian tribe or tribal organization.

(iv) Disputes arising as a result of a suspension of the work by the Secretary shall be subject to the Contract Disputes Act or any other alternative dispute resolution mechanism as negotiated between and agreed to by the parties and contained in the contract.

(12) The Secretary can terminate the project for cause in the event non-compliant work is not corrected through the suspension process specified in paragraph (11) of this section.

(13) The Secretary retains authority to terminate the project for convenience for the following reasons:

(i) Termination for convenience is requested by the Indian tribe or tribal organization;

(ii) Termination for convenience is requested by the Secretary and agreed to by the Indian tribe or tribal organization;

(iii) Funds allocated for the project that is the subject of the contract are rescinded by Congressional action;

(iv) Other Congressional actions take place that affect the subject matter of the contract;

(v) If the Secretary terminates a self-determination construction contract for convenience, the Secretary shall provide the Indian tribe or tribal organization 21 days advance written notice of intent to terminate a contract for convenience; or

(vi) The Indian tribe or tribal organization shall be compensated for reasonable costs incurred due to termination of the contract.

§ 900.132 Once a contract and/or grant is awarded, how will the Indian tribe or tribal organization receive payments?

(a) A schedule for advance payments shall be developed based on progress, need, and other considerations in accordance with applicable law. The payment schedule shall be negotiated by the parties and included in the contract. The payment schedule may be adjusted as negotiated by the parties during the course of the project based on progress and need.

(b) Payments shall be made to the Indian tribe or tribal organization according to the payment schedule contained in the contract. If the contract does not provide for the length of each allocation period, the Secretary shall make payments to the Indian tribe or tribal organization at least quarterly. Each allocation shall be adequate to provide funds for the contract activities anticipated to be conducted during the allocation period, except that:

(1) The first allocation may be greater than subsequent allocations and include mobilization costs, and contingency funds described in § 900.128(e)(8); and

(2) Any allocation may include funds for payment for materials that will be used during subsequent allocation periods.

(c) The Indian tribe or tribal organization may propose a schedule of payment amounts measured by time or

measured by phase of the project (e.g., planning, design, construction).

(d) The amount of each payment allocation shall be stated in the Indian tribe or tribal organization's contract proposal. Upon award of the contract, the Secretary shall transfer the amount of the first allocation to the Indian tribe or tribal organization within 21 days after the date of contract award. The second allocation shall be made not later than 7 days before the end of the first allocation period.

(e) Not later than 7 days before the end of each subsequent allocation period after the second allocation, the Secretary shall transfer to the Indian tribe or tribal organization the amount for the next allocation period, unless the Indian tribe or tribal organization is delinquent in submission of allocation period progress reports and financial reports or the Secretary takes action to suspend or terminate the contract in accordance with § 900.131(b)(11), § 900.131(b)(12), or § 900.131(b)(13).

§ 900.133 Does the declination process or the Contract Dispute Act apply to construction contract amendments proposed either by an Indian tribe or tribal organization or the Secretary?

The Contract Disputes Act generally applies to such amendments. However, the declination process and the procedures in § 900.122 and § 900.123 apply to the proposal by an Indian tribe or tribal organization when the proposal is for a new project, a new phase or discreet stage of a phase of a project, or an expansion of a project resulting from an additional allocation of funds by the Secretary under § 900.120.

§ 900.134 At the end of a self-determination construction contract, what happens to savings on a cost-reimbursement contract?

The savings shall be used by the Indian tribe or tribal organization to provide additional services or benefits under the contract. Unexpended contingency funds obligated to the contract, and remaining at the end of the contract, are savings. No further approval or justifying documentation by the Indian tribe or tribal organization shall be required before expenditure of funds.

§ 900.135 May the time frames for action set out in this subpart be reduced?

Yes. The time frames in this subpart are intended to be maximum times and may be reduced based on urgency and need, by agreement of the parties. If the Indian tribe or tribal organization requests reduced time frames for action due to unusual or special conditions (such as limited construction periods), the Secretary shall make a good faith effort to accommodate the requested time frames.

§ 900.136 Do tribal employment rights ordinances apply to construction contracts and subcontracts?

Yes. Tribal employment rights ordinances do apply to construction contracts and subcontracts pursuant to section 7(b) and section 7(c) of the Act.

§ 900.137 Do all provisions of the other subparts apply to contracts awarded under this subpart?

Yes, except as otherwise provided in this subpart and unless excluded as follows: programmatic reports and data requirements, reassumption, contract review and approval process, contract proposal contents, and § 900.150 (d) and (e) of these regulations.

Subpart K—Waiver Procedures

§ 900.140 Can any provision of the regulations under this part be waived?

Yes. Upon the request of an Indian tribe or tribal organization, the Secretary shall waive any provision of these regulations, including any cost principles adopted by the regulations under this part, if the Secretary finds that granting the waiver is either in the best interest of the Indians served by the contract, or is consistent with the policies of the Act and is not contrary to statutory law.

§ 900.141 How does an Indian tribe or tribal organization get a waiver?

To obtain a waiver, an Indian tribe or tribal organization shall submit a written request to the Secretary identifying the regulation to be waived and the

basis for the request. The Indian tribe or tribal organization shall explain the intended effect of the waiver, the impact upon the Indian tribe or tribal organization if the waiver is not granted, and the specific contract(s) to which the waiver will apply.

§ 900.142 Does an Indian tribe or tribal organization's waiver request have to be included in an initial contract proposal?

No. Although a waiver request may be included in a contract proposal, it can also be submitted separately.

§ 900.143 How is a waiver request processed?

The Secretary shall approve or deny a waiver within 90 days after the Secretary receives a written waiver request. The Secretary's decision shall be in writing. If the requested waiver is denied, the Secretary shall include in the decision a full explanation of the basis for the decision.

§ 900.144 What happens if the Secretary makes no decision within the 90-day period?

The waiver request is deemed approved.

§ 900.145 On what basis may the Secretary deny a waiver request?

Consistent with section 107(e) of the Act, the Secretary may only deny a waiver request based on a specific written finding. The finding must clearly demonstrate (or be supported by controlling legal authority) that if the waiver is granted:

(a) The service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

(b) Adequate protection of trust resources is not assured;

(c) The proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;

(d) The amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act; or

(e) The program, function, service, or activity (or portion of it) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities that are contractible under the Act because the proposal includes activities that cannot lawfully be carried out by the contractor.

§ 900.146 Is technical assistance available for waiver requests?

Yes. Technical assistance is available as provided in § 900.7 to prepare a waiver request or to overcome any stated objection which the Secretary might have to the request.

§ 900.147 What appeal rights are available?

If the Secretary denies a waiver request, the Indian tribe or tribal organization has the right to appeal the decision and request a hearing on the record under the procedures for hearings and appeals contained in subpart L of these regulations. Alternatively, the Indian tribe or tribal organization may sue in Federal district court to challenge the Secretary's action.

§ 900.148 How can an Indian tribe or tribal organization secure a determination that a law or regulation has been superseded by the Indian Self-Determination Act, as specified in section 107(b) of the Act?

Any Indian tribe or tribal organization may at any time submit a request to the Secretary for a determination that any law or regulation has been superseded by the Act and that the law has no applicability to any contract or proposed contract under the Act. The Secretary is required to provide an initial decision on such a request within 90 days after receipt. If such a request is denied, the Indian tribe or tribal organization may appeal under subpart L of these regulations. The Secretary shall provide notice of each determination made under this subpart to all Indian tribes and tribal organizations.

Subpart L—Appeals

APPEALS OTHER THAN EMERGENCY REASSUMPTION AND SUSPENSION, WITHHOLDING OR DELAY IN PAYMENT

§ 900.150 What decisions can an Indian tribe or tribal organization appeal under this subpart?

(a) A decision to decline to award a self-determination contract, or a portion thereof, under section 102 of the Act;

(b) A decision to decline to award a construction contract, or a portion thereof, under sections 105(m) and 102 of the Act;

(c) A decision to decline a proposed amendment to a self-determination contract, or a portion thereof, under section 102 of the Act;

(d) A decision not to approve a proposal, in whole or in part, to redesign a program;

(e) A decision to rescind and reassume a self-determination contract, in whole or in part, under section 109 of the Act except for emergency reassumptions;

(f) A decision to refuse to waive a regulation under section 107(e) of the Act;

(g) A disagreement between an Indian tribe or tribal organization and the Federal government over proposed reporting requirements;

(h) A decision to refuse to allow an Indian tribe or tribal organization to convert a contract to mature status, under section 4(h) of the Act;

(i) All other appealable pre-award decisions by a Federal official as specified in these regulations, whether an official of the Department of the Interior or the Department of Health and Human Services; or

(j) A decision relating to a request for a determination that a law or regulation has been superseded by the Act.

§ 900.151 Are there any appeals this subpart does not cover?

This subpart does not cover:

(a) Disputes which arise after a self-determination contract has been awarded, or emergency reassumption of self-determination contracts or suspension of payments under self-determination contracts, which are covered under § 900.170 through § 900.176 of these regulations.

(b) Other post-award contract disputes, which are covered under subpart N.

(c) Denials under the Freedom of Information Act, 5 U.S.C. 552, which may be appealed under 43 CFR 2 for the Department of the Interior and 45 CFR 5 for the Department of Health and Human Services; and

(d) Decisions relating to the award of discretionary grants under section 103 of the Act, which may be appealed under 25 CFR 2 for the Department of the Interior, and under 45 CFR 5 for the Department of Health and Human Services.

§ 900.152 How does an Indian tribe or tribal organization know where and when to file its appeal from decisions made by agencies of DOI or DHHS?

Every decision in any of the ten areas listed above shall contain information which shall tell the Indian tribe or tribal organization where and when to file the Indian tribe or tribal organization's appeal. Each decision shall include the following statement:

Within 30 days of the receipt of this decision, you may request an informal conference under 25 CFR 900.154, or appeal this decision under 25 CFR 900.158 to the Interior Board of Indian Appeals (IBIA). Should you decide to appeal this decision, you may request a hearing on the record. An appeal to the IBIA under 25 CFR 900.158 shall be filed with the IBIA by certified mail or by hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies.

§ 900.153 Does an Indian tribe or tribal organization have any options besides an appeal?

Yes. The Indian tribe or tribal organization may request an informal conference. An informal conference is a way to resolve issues as quickly as possible, without the need for a formal hearing. The Indian tribe or tribal organization may also choose to sue in U.S. District Court under section 102(b)(3) and section 110(a) of the Act.

§ 900.154 How does an Indian tribe or tribal organization request an informal conference?

The Indian tribe or tribal organization shall file its request for an informal conference with the office of the person whose decision it is appealing, within 30 days of the day it receives the decision. The Indian tribe or tribal organization may either hand-deliver the request for an informal conference to that person's office, or mail it by certified mail, return receipt requested. If the Indian tribe or tribal organization mails the request, it will be considered filed on the date the Indian tribe or tribal organization mailed it by certified mail.

§ 900.155 How is an informal conference held?

(a) The informal conference shall be held within 30 days of the date the request was received, unless the Indian tribe or tribal organization and the authorized representative of the Secretary agree on another date.

(b) If possible, the informal conference will be held at the Indian tribe or tribal organization's office. If the meeting cannot be held at the Indian tribe or tribal organization's office and is held more than fifty miles from its office, the Secretary shall arrange to pay transportation costs and per diem for incidental expenses to allow for adequate representation of the Indian tribe or tribal organization.

(c) The informal conference shall be conducted by a designated representative of the Secretary.

(d) Only people who are the designated representatives of the Indian tribe or tribal organization, or authorized by the Secretary of Health and Human Services or by the appropriate agency of the Department of the Interior, are allowed to make presentations at the informal conference.

§ 900.156 What happens after the informal conference?

(a) Within 10 days of the informal conference, the person who conducted the informal conference shall prepare and mail to the Indian tribe or tribal organization a written report which summarizes what happened at the informal conference and a recommended decision.

(b) Every report of an informal conference shall contain the following language:

> Within 30 days of the receipt of this recommended decision, you may file an appeal of the initial decision of the DOI or DHHS agency with the Interior Board of Indian Appeals (IBIA) under 25 CFR 900.157. You may request a hearing on the record. An appeal to the IBIA under 25 CFR 900.157 shall be filed with the IBIA by certified mail or hand delivery at the following address: Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your Notice of Appeal on the Secretary and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies.

§ 900.157 Is the recommended decision always final?

No. If the Indian tribe or tribal organization is dissatisfied with the recommended decision, it may still appeal the initial decision within 30 days of receiving the recommended decision and the report of the informal conference. If the Indian tribe or tribal organization does not file a notice of appeal within 30 days, or before the expiration of the extension it has received under § 900.159, the recommended decision becomes final.

§ 900.158 How does an Indian tribe or tribal organization appeal the initial decision, if it does not request an informal conference or if it does not agree with the recommended decision resulting from the informal conference?

(a) If the Indian tribe or tribal organization decides to appeal, it shall file a notice of appeal with the IBIA within 30 days of receiving either the initial decision or the recommended decision.

(b) The Indian tribe or tribal organization may either hand-deliver the notice of appeal to the IBIA, or mail it by certified mail, return receipt requested. If the Indian tribe or tribal organization mails the Notice of Appeal, it will be considered filed on the date the Indian tribe or tribal organization mailed it by certified mail. The Indian tribe or tribal organization should mail the notice of appeal to: Board of Indian

Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203.

(c) The Notice of Appeal shall:

(1) Briefly state why the Indian tribe or tribal organization thinks the initial decision is wrong;

(2) Briefly identify the issues involved in the appeal; and

(3) State whether the Indian tribe or tribal organization wants a hearing on the record, or whether the Indian tribe or tribal organization wants to waive its right to a hearing.

(d) The Indian tribe or tribal organization shall serve a copy of the notice of appeal upon the official whose decision it is appealing. The Indian tribe or tribal organization shall certify to the IBIA that it has done so.

(e) The authorized representative of the Secretary of Health and Human Services or the authorized representative of the Secretary of the Interior will be considered a party to all appeals filed with the IBIA under the Act.

§ 900.159 May an Indian tribe or tribal organization get an extension of time to file a notice of appeal?

Yes. If the Indian tribe or tribal organization needs more time, it can request an extension of time to file its Notice of Appeal within 60 days of receiving either the initial decision or the recommended decision resulting from the informal conference. The request of the Indian tribe or tribal organization shall be in writing, and shall give a reason for not filing its notice of appeal within the 30-day time period. If the Indian tribe or tribal organization has a valid reason for not filing its notice of appeal on time, it may receive an extension from the IBIA.

§ 900.160 What happens after an Indian tribe or tribal organization files an appeal?

(a) Within 5 days of receiving the Indian tribe or tribal organization's notice of appeal, the IBIA will decide whether the appeal falls under § 900.150(a) through § 900.150(g). If so, the Indian tribe or tribal organization is entitled to a hearing.

(1) If the IBIA determines that the appeal of the Indian tribe or tribal organization falls under § 900.150(h), § 900.150(i), or § 900.150(j), and the Indian tribe or tribal organization has requested a hearing, the IBIA will grant the request for a hearing unless the IBIA determines that there are no genuine issues of material fact to be resolved.

(2) If the IBIA cannot make that decision based on the information included in the notice of appeal, the IBIA may ask for additional statements from the Indian tribe or tribal organization, or from the appropriate Federal agency. If the IBIA asks for more statements, it will make its decision within 5 days of receiving those statements.

(b) If the IBIA decides that the Indian tribe or tribal organization is not entitled to a hearing or if the Indian tribe or tribal organization has waived its right to a hearing on the record, the IBIA will ask for the administrative record under 43 CFR 4.335. The IBIA shall tell the parties that the appeal will be considered under the regulations at 43 CFR 4, subpart D, except the case shall be docketed immediately, without waiting for the 20-day period described in 43 CFR 4.336.

§ 900.161 How is a hearing arranged?

(a) If a hearing is to be held, the IBIA will refer the Indian tribe or tribal organization's case to the Hearings Division of the Office of Hearings and Appeals of the U.S. Department of the Interior. The case will then be assigned to an Administrative Law Judge (ALJ), appointed under 5 U.S.C. 3105.

(b) Within 15 days of the date of the referral, the ALJ will hold a pre-hearing conference, by telephone or in person, to decide whether an evidentiary hearing is necessary, or whether it is possible to decide the appeal based on the written record. At the pre-hearing conference the ALJ will provide for:

(1) A briefing and discovery schedule;

(2) A schedule for the exchange of information, including, but not limited to witness and exhibit lists, if an evidentiary hearing is to be held;

(3) The simplification or clarification of issues;

(4) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if an evidentiary hearing is to be held;

(5) The possibility of agreement disposing of all or any of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(c) The ALJ shall order a written record to be made of any conference results that are not reflected in a transcript.

§ 900.162 What happens when a hearing is necessary?

(a) The ALJ shall hold a hearing within 60 days of the date of the order referring the appeal to the ALJ, unless the parties agree to have the hearing on a later date.

(b) At least 30 days before the hearing, the government agency shall file and serve the Indian tribe or tribal organization with a response to the notice of appeal.

(c) If the hearing is held more than 50 miles from the Indian tribe or tribal organization's office, the Secretary shall arrange to pay transportation costs and per diem for incidental expenses to allow for adequate representation of the Indian tribe or tribal organization.

(d) The hearing shall be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. 556.

§ 900.163 What is the Secretary's burden of proof for appeals from decisions under § 900.150(a) through § 900.150(g)?

For those appeals, the Secretary has the burden of proof (as required by section 102(e)(1) of the Act) to establish by clearly demonstrating the validity of the grounds for declining the contract proposal.

§ 900.164 What rights do Indian tribes, tribal organizations, and the government have during the appeal process?

Both the Indian tribe or tribal organization and the government agency have the same rights during the appeal process. These rights include the right to:

(a) Be represented by legal counsel;

(b) Have the parties provide witnesses who have knowledge of the relevant issues, including specific witnesses with that knowledge, who are requested by either party;

(c) Cross-examine witnesses;

(d) Introduce oral or documentary evidence, or both;

(e) Require that oral testimony be under oath;

(f) Receive a copy of the transcript of the hearing, and copies of all documentary evidence which is introduced at the hearing;

(g) Compel the presence of witnesses, or the production of documents, or both, by subpoena at hearings or at depositions;

(h) Take depositions, to request the production of documents, to serve interrogatories on other parties, and to request admissions; and

(i) Any other procedural rights under the Administrative Procedure Act, 5 U.S.C. 556.

§ 900.165 What happens after the hearing?

(a) Within 30 days of the end of the formal hearing or any post-hearing briefing schedule established by the ALJ, the ALJ shall send all the parties a recommended decision, by certified mail, return receipt requested. The recommended decision shall contain the ALJ's findings of fact and conclusions of law on all the issues. The recommended decision shall also state that the Indian tribe or tribal organization has the right to object to the recommended decision.

(b) If the appeal involves the Department of Health and Human Services, the recommended decision shall contain the following statement:

> Within 30 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Secretary of Health and Human Services under 25 CFR 900.165(b). An appeal to the Secretary under 25 CFR 900.165(b) shall be filed at the following address: Department of Health and Human Services, 200 Independence Ave. S.W., Washington, DC, 20201. You shall serve copies of your notice of appeal on the official whose decision is being appealed. You shall certify to the Secretary that you have served this copy. If neither party files an objection to the recommended decision within 30 days, the recommended decision will become final.

(c) If the appeal involves the Department of the Interior, the recommended decision shall contain the following statement:

Within 30 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Interior Board of Indian Appeals (IBIA) under 25 CFR 900.165(c). An appeal to the IBIA under 25 CFR 900.165(c) shall be filed at the following address: Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your notice of appeal on the Secretary of the Interior, and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies. If neither party files an objection to the recommended decision within 30 days, the recommended decision will become final.

§ 900.166 Is the recommended decision always final?

No. Any party to the appeal may file precise and specific written objections to the recommended decision, or any other comments, within 30 days of receiving the recommended decision. Objections shall be served on all other parties. The recommended decision shall become final 30 days after the Indian tribe or tribal organization receives the ALJ's recommended decision, unless a written statement of objections is filed with the Secretary of Health and Human Services or the IBIA during the 30-day period. If no party files a written statement of objections within 30 days, the recommended decision shall become final.

§ 900.167 If an Indian tribe or tribal organization objects to the recommended decision, what will the Secretary of Health and Human Services or the IBIA do?

(a) The Secretary of Health and Human Services or the IBIA has 20 days from the date it receives any timely written objections to modify, adopt, or reverse the recommended decision. If the Secretary of Health and Human Services or the IBIA does not modify or reverse the recommended decision during that time, the recommended decision automatically becomes final.

(b) When reviewing the recommended decision, the IBIA or the Secretary may consider and decide all issues properly raised by any party to the appeal, based on the record.

(c) The decision of the Secretary or the IBIA shall:

(1) Be in writing;

(2) Specify the findings of fact or conclusions of law which are modified or reversed;

(3) Give reasons for the decision, based on the record; and

(4) State that the decision is final for the Department.

§ 900.168 Will an appeal hurt the Indian tribe or tribal organization's position in other contract negotiations?

No. A pending appeal will not affect or prevent the negotiation or award of another contract.

§ 900.169 Will the decisions on appeals be available for the public to review?

Yes. The Secretary shall publish all final decisions from the ALJs, the IBIA, and the Secretary of Health and Human Services.

APPEALS OF EMERGENCY REASSUMPTION OF SELF-DETERMINATION CONTRACTS OR SUSPENSIONS, WITHHOLDING OR DELAY OF PAYMENTS UNDER A SELF-DETERMINATION CONTRACT

§ 900.170 What happens in the case of emergency reassumption or suspension or withholding or delay of payments?

(a) This subpart applies when the Secretary gives notice to an Indian tribe or tribal organization that the Secretary intends to:

(1) Immediately rescind a contract or grant and reassume a program; or

(2) Suspend, withhold, or delay payment under a contract.

(b) When the Secretary advises an Indian tribe or tribal organization that the Secretary intends to take an action referred to in paragraph (a)(1) of this section, the Secretary shall also notify the Deputy Director of the Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203.

§ 900.171 Will there be a hearing?

Yes. The Deputy Director of the Office of Hearings and Appeals shall appoint an Administrative Law Judge (ALJ) to hold a hearing.

(a) The hearing shall be held within 10 days of the date of the notice referred to in § 900.170 unless the Indian

tribe or tribal organization agrees to a later date.

(b) If possible, the hearing will be held at the office of the Indian tribe or tribal organization. If the hearing is held more than 50 miles from the office of the Indian tribe or tribal organization, the Secretary shall arrange to pay transportation costs and per diem for incidental expenses. This will allow for adequate representation of the Indian tribe or tribal organization.

§ 900.172 What happens after the hearing?

(a) Within 30 days after the end of the hearing or any post-hearing briefing schedule established by the ALJ, the ALJ shall send all parties a recommended decision by certified mail, return receipt requested. The recommended decision shall contain the ALJ's findings of fact and conclusions of law on all the issues. The recommended decision shall also state that the Indian tribe or tribal organization has the right to object to the recommended decision.

(b) If the appeal involves the Department of Health and Human Services, the recommended decision shall contain the following statement:

Within 15 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Secretary of Health and Human Services under 25 CFR 900.165(b). An appeal to the Secretary under 25 CFR 900.165(b) shall be filed at the following address: Department of Health and Human Services, 200 Independence Ave. S.W., Washington, DC 20201. You shall serve copies of your notice of appeal on the official whose decision is being appealed. You shall certify to the Secretary that you have served this copy. If neither party files an objection to the recommended decision within 15 days, the recommended decision will become final.

(c) If the appeal involves the Department of the Interior, the recommended decision shall contain the following statement:

Within 15 days of the receipt of this recommended decision, you may file an objection to the recommended decision with the Interior Board of Indian Appeals (IBIA) under 25 CFR 900.165(c). An appeal to the IBIA under 25 CFR 900.165(c) shall be filed at the following address: Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, VA 22203. You shall serve copies of your notice of appeal on the Secretary of the Interior, and on the official whose decision is being appealed. You shall certify to the IBIA that you have served these copies. If neither party files an objection to the recommended decision within 15 days, the recommended decision will become final.

§ 900.173 Is the recommended decision always final?

No. Any party to the appeal may file precise and specific written objections to the recommended decision, or any other comments, within 15 days of receiving the recommended decision. You shall serve a copy of your objections on the other party. The recommended decision will become final 15 days after the Indian tribe or tribal organization receives the ALJ's recommended decision, unless a written statement of objections is filed with the Secretary of Health and Human Services or the IBIA during the 15-day period. If no party files a written statement of objections within 15 days, the recommended decision will become final.

§ 900.174 If an Indian tribe or tribal organization objects to the recommended decision, what will the Secretary of Health and Human Services or the IBIA do?

(a) The Secretary or the IBIA has 15 days from the date he/she receives timely written objections to modify, adopt, or reverse the recommended decision. If the Secretary or the IBIA does not modify or reverse the recommended decision during that time, the recommended decision automatically becomes final.

(b) When reviewing the recommended decision, the IBIA or the Secretary may consider and decide all issues properly raised by any party to the appeal, based on the record.

(c) The decision of the Secretary or of the IBIA shall:

(1) Be in writing;

(2) Specify the findings of fact or conclusions of law which are modified or reversed;

(3) Give reasons for the decision, based on the record; and

(4) State that the decision is final for the Department.

§ 900.175 Will an appeal hurt an Indian tribe or tribal organization's position in other contract negotiations?

No. A pending appeal will not affect or prevent the negotiation or award of another contract.

§ 900.176 Will the decisions on appeals be available for the public to review?

Yes. The Secretary shall publish all final decisions from the ALJs, the IBIA, and the Secretary of Health and Human Services.

APPLICABILITY OF THE EQUAL ACCESS TO JUSTICE ACT

§ 900.177 Does the Equal Access to Justice Act (EAJA) apply to appeals under this subpart?

Yes. EAJA claims against the DOI or the DHHS will be heard by the IBIA under 43 CFR 4.601–4.619. For DHHS, appeals from the EAJA award will be according to 25 CFR 900.165(b).

Subpart M—Federal Tort Claims Act Coverage General Provisions

§ 900.180 What does this subpart cover?

This subpart explains the applicability of the Federal Tort Claims Act (FTCA). This section covers:

(a) Coverage of claims arising out of the performance of medical-related functions under self-determination contracts;

(b) Coverage of claims arising out of the performance of non-medical-related functions under self-determination contracts; and

(c) Procedures for filing claims under FTCA.

§ 900.181 What definitions apply to this subpart?

Indian contractor means:

(1) In California, subcontractors of the California Rural Indian Health Board, Inc. or, subject to approval of the IHS Director after consultation with the DHHS Office of General Counsel, subcontractors of an Indian tribe or tribal organization which are:

(i) Governed by Indians eligible to receive services from the Indian Health Service;

(ii) Which carry out comprehensive IHS service programs within geographically defined service areas; and

(iii) Which are selected and identified through tribal resolution as the local provider of Indian health care services.

(2) Subject to the approval of the IHS Director after consultation with the DHHS Office of General Counsel, Indian tribes and tribal organizations which meet in all respects the requirements of the Indian Self-Determination Act to contract directly with the Federal Government but which choose through tribal resolution to subcontract to carry out IHS service programs within geographically defined service areas with another Indian tribe or tribal organization which contracts directly with IHS.

(3) Any other contractor that qualifies as an ''Indian contractor'' under the Indian Self-Determination Act.

§ 900.182 What other statutes and regulations apply to FTCA coverage?

A number of other statutes and regulations apply to FTCA coverage, including the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401, 2671–2680) and related Department of Justice regulations in 28 CFR part 14.

§ 900.183 Do Indian tribes and tribal organizations need to be aware of areas which FTCA does not cover?

Yes. There are claims against self-determination contractors which are not covered by FTCA, claims which may not be pursued under FTCA, and remedies that are excluded by FTCA. General guidance is provided below as to these matters but is not intended as a definitive description of coverage, which is subject to review by the Department of Justice and the courts on a case-by-case basis.

(a) *What claims are expressly barred by FTCA and therefore may not be made against the United States, an Indian tribe or tribal organization?* Any claim under 28 U.S.C. 2680, including claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, unless otherwise authorized by 28 U.S.C. 2680(h).

(b) *What claims may not be pursued under FTCA?*

(1) Except as provided in § 900.181(a)(1) and § 900.189, claims against subcontractors arising out of the performance of subcontracts with a self-determination contractor;

(2) Claims for on-the-job injuries which are covered by workmen's compensation;

(3) Claims for breach of contract rather than tort claims; or

(4) Claims resulting from activities performed by an employee which are outside the scope of employment.

(c) *What remedies are expressly excluded by FTCA and therefore are barred?*

(1) Punitive damages, unless otherwise authorized by 28 U.S.C. 2674; and

(2) Other remedies not permitted under applicable state law.

§ 900.184 Is there a deadline for filing FTCA claims?

Yes. Claims shall be filed within 2 years of the date of accrual. (28 U.S.C. 2401).

§ 900.185 How long does the Federal government have to process an FTCA claim after the claim is received by the Federal agency, before a lawsuit may be filed?

Six months.

§ 900.186 Is it necessary for a self-determination contract to include any clauses about Federal Tort Claims Act coverage?

No, it is optional. At the request of Indian tribes and tribal organizations, self-determination contracts shall include the following clauses to clarify the scope of FTCA coverage:

(a) The following clause may be used for all contracts:

For purposes of Federal Tort Claims Act coverage, the contractor and its employees (including individuals performing personal services contracts with the contractor to provide health care services) are deemed to be employees of the Federal government while performing work under this contract. This status is not changed by the source of the funds used by the contractor to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the contractor.

(b) The following clause is for IHS contracts only:

Under this contract, the contractor's employee may be required as a condition of employment to provide health services to non-IHS beneficiaries in order to meet contractual obligations. These services may be provided in either contractor or non-contractor facilities. The employee's status for Federal Tort Claims Act purposes is not affected.

§ 900.187 Does FTCA apply to a self-determination contract if FTCA is not referenced in the contract?

Yes.

§ 900.188 To what extent shall the contractor cooperate with the Federal government in connection with tort claims arising out of the contractor's performance?

(a) The contractor shall designate an individual to serve as tort claims liaison with the Federal government.

(b) As part of the notification required by 28 U.S.C. 2679(c), the contractor shall notify the Secretary immediately in writing of any tort claim (including any proceeding before an administrative agency or court) filed against the contractor or any of its employees that relates to performance of a self-determination contract or subcontract.

(c) The contractor, through its designated tort claims liaison, shall assist the appropriate Federal agency in preparing a comprehensive, accurate, and unbiased report of the incident so that the claim may be properly evaluated. This report should be completed within 60 days of notification of the filing of the tort claim. The report should be complete in every significant detail and include as appropriate:

(1) The date, time and exact place of the accident or incident;

(2) A concise and complete statement of the circumstances of the accident or incident;

(3) The names and addresses of tribal and/or Federal employees involved as participants or witnesses;

(4) The names and addresses of all other eyewitnesses;

(5) An accurate description of all government and other privately-owned property involved and the nature and amount of damage, if any;

(6) A statement as to whether any person involved was cited for violating a Federal, State or tribal law, ordinance, or regulation;

(7) The contractor's determination as to whether any of its employees (including Federal employees assigned to the contractor) involved in the incident giving rise to the tort claim were acting within the scope of their employment in carrying out the contract at the time the incident occurred;

(8) Copies of all relevant documentation, including available police reports, statements of witnesses, newspaper accounts, weather reports, plats and photographs of the site or damaged property, such as may be necessary or useful for purposes of claim determination by the Federal agency; and

(9) Insurance coverage information, copies of medical bills, and relevant employment records.

(d) The contractor shall cooperate with and provide assistance to the U.S. Department of Justice attorneys assigned to defend the tort claim, including, but not limited to, case preparation, discovery, and trial.

(e) If requested by the Secretary, the contractor shall make an assignment and subrogation of all the contractor's rights and claims (except those against the Federal government) arising out of a tort claim against the contractor.

(f) If requested by the Secretary, the contractor shall authorize representatives of the Secretary to settle or defend any claim and to represent the contractor in or take charge of any action. If the Federal government undertakes the settlement or defense of any claim or action the contractor shall provide all reasonable additional assistance in reaching a settlement or asserting a defense.

§ 900.189 Does this coverage extend to subcontractors of self-determination contracts?

No. Subcontractors or subgrantees providing services to a Public Law 93–638 contractor or grantee are generally not covered. The only exceptions are Indian contractors such as those under subcontract with the California Rural Indian Health Board to carry out IHS programs in geographically defined service areas in California and personal services contracts under § 900.193 (for § 900.183(b)(1)) or § 900.183(b) (for § 900.190).

MEDICAL-RELATED CLAIMS

§ 900.190 Is FTCA the exclusive remedy for a tort claim for personal injury or death resulting from the performance of a self-determination contract?

Yes, except as explained in § 900.183(b). No claim may be filed against a self-determination contractor or employee for personal injury or death arising from the performance of medical, surgical, dental, or related functions by the contractor in carrying out self-determination contracts under the Act. Related functions include services such as those provided by nurses, laboratory and x-ray technicians, emergency medical technicians and other health care providers including psychologists and social workers. All such claims shall be filed against the United States and are subject to the limitations and restrictions of the FTCA.

§ 900.191 Are employees of self-determination contractors providing health services under the self-determination contract protected by FTCA?

Yes. For the purpose of Federal Tort Claims Act coverage, an Indian tribe or tribal organization and its employees performing medical-related functions under a self-determination contract are deemed a part of the Public Health Service if the employees are acting within the scope of their employment in carrying out the contract.

§ 900.192 What employees are covered by FTCA for medical-related claims?

(a) Permanent employees;

(b) Temporary employees;

(c) Persons providing services without compensation in carrying out a contract;

(d) Persons required because of their employment by a self-determination contractor to serve non-IHS beneficiaries (even if the services are provided in facilities not owned by the contractor); and

(e) Federal employees assigned to the contract.

§ 900.193 Does FTCA coverage extend to individuals who provide health care services under a personal services contract providing services in a facility that is owned, operated, or constructed under the jurisdiction of the IHS?

Yes. The coverage extends to individual personal services contractors providing health services in such a facility, including a facility owned by an Indian tribe or tribal organization but operated under a self-determination contract with IHS.

§ 900.194 Does FTCA coverage extend to services provided under a staff privileges agreement with a non-IHS facility where the agreement requires a health care practitioner to provide reciprocal services to the general population?

Yes. Those services are covered, as long as the contractor's health care practitioners do not receive additional compensation from a third party for the performance of these services and they are acting within the scope of their employment under a self-determination contract. Reciprocal services include:

(a) Cross-covering other medical personnel who temporarily cannot attend their patients;

(b) Assisting other personnel with surgeries or other medical procedures;

(c) Assisting with unstable patients or at deliveries; or

(d) Assisting in any patient care situation where additional assistance by health care personnel is needed.

§ 900.195 Does FTCA coverage extend to the contractor's health care practitioners providing services to private patients on a fee-for-services basis when such personnel (not the self-determination contractor) receive the fee?

No.

§ 900.196 Do covered services include the conduct of clinical studies and investigations and the provision of emergency services, including the operation of emergency motor vehicles?

Yes, if the services are provided in carrying out a self-determination contract. (An emergency motor vehicle is a vehicle, whether government, contractor, or employee-owned, used to transport passengers for medical services.)

§ 900.197 Does FTCA cover employees of the contractor who are paid by the contractor from funds other than those provided through the self-determination contract?

Yes, as long as the services out of which the claim arose were performed in carrying out the self-determination contract.

§ 900.198 Are Federal employees assigned to a self-determination contractor under the Intergovernmental Personnel Act or detailed under section 214 of the Public Health Service Act covered to the same extent that they would be if working directly for a Federal agency?

Yes.

§ 900.199 Does FTCA coverage extend to health care practitioners to whom staff privileges have been extended in contractor health care facilities operated under a self-determination contract on the condition that such practitioner provide health services to IHS beneficiaries covered by FTCA?

Yes, health care practitioners with staff privileges in a facility operated by a contractor are covered when they perform services to IHS beneficiaries. Such personnel are not covered when providing services to non-IHS beneficiaries.

§ 900.200 May persons who are not Indians or Alaska Natives assert claims under FTCA?

Yes. Non-Indian individuals served under the contract whether or not on a fee-for-service basis, may assert claims under this subpart.

PROCEDURE FOR FILING MEDICAL-RELATED CLAIMS

§ 900.201 How should claims arising out of the performance of medical-related functions be filed?

Claims should be filed on Standard Form 95 (Claim for Damage, Injury or Death) or by submitting comparable written information (including a definite amount of monetary damage claimed) with the Chief, PHS Claims Branch, Room 18–20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, or at such other address as shall have been provided to the contractor in writing.

§ 900.202 What should a self-determination contractor or a contractor's employee do on receiving such a claim?

They should immediately forward the claim to the PHS Claims Branch at the address indicated in § 900.201 and notify the contractor's tort claims liaison.

§ 900.203 If the contractor or contractor's employee receives a summons and/or a complaint alleging a tort covered by FTCA, what should the contractor do?

As part of the notification required by 28 U.S.C. 2679(c), the contractor should immediately inform the Chief, Litigation Branch, Business and Administrative Law Division, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue SW., Room 5362, Washington, DC 20201, and the contractor's tort claims liaison, and forward the following materials:

(a) Four copies of the claimant's medical records of treatment, inpatient and outpatient, and any related correspondence, as well as reports of consultants;

(b) A narrative summary of the care and treatment involved;

(c) The names and addresses of all personnel who were involved in the care and treatment of the claimant;

(d) Any comments or opinions that the employees who treated the claimant believe to be pertinent to the allegations contained in the claim; and

(e) Other materials identified in § 900.188(c).

NON-MEDICAL RELATED CLAIMS

§ 900.204 Is FTCA the exclusive remedy for a non-medical related tort claim arising out of the performance of a self-determination contract?

Yes. Except as explained in § 900.183(b), no claim may be filed against a self-determination contractor or employee based upon performance of non-medical-related functions under a self-determination contract. Claims of this type must be filed against the United States under FTCA.

§ 900.205 To what non-medical-related claims against self-determination contractors does FTCA apply?

It applies to:

(a) All tort claims arising from the performance of self-determination contracts under the authority of the Act on or after October 1, 1989; and

(b) Any tort claims first filed on or after October 24, 1989, regardless of when the incident which is the basis of the claim occurred.

§ 900.206 What employees are covered by FTCA for non-medical-related claims?

(a) Permanent employees;

(b) Temporary employees;

(c) Persons providing services without compensation in carrying out a contract;

(d) Persons required because of their employment by a self-determination contractor to serve non-IHS beneficiaries (even if the services are provided in facilities not owned by the contractor); and

(e) Federal employees assigned to the contract.

§ 900.207 How are non-medical related tort claims and lawsuits filed for IHS?

Non-medical-related tort claims and lawsuits arising out of the performance of self-determination contracts with the Indian Health Service should be filed in the manner described in § 900.201 (for both § 900.207 and § 900.208).

§ 900.208 How are non-medical related tort claims and lawsuits filed for DOI?

Non-medical-related claims arising out of the performance of self-determination contracts with the Secretary of the Interior should be filed in the manner described in § 900.201 with the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street NW., Washington, DC 20240.

§ 900.209 What should a self-determination contractor or contractor's employee do on receiving a non-medical related tort claim?

(a) If the contract is with DHHS, they should immediately forward the claim to the PHS Claims Branch at the address indicated in § 900.201 and notify the contractor's tort claims liaison.

(b) If the contract is with DOI, they should immediately notify the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street N.W., Washington, DC 20240.

§ 900.210 If the contractor or contractor's employee receives a summons and/or complaint alleging a non-medical related tort covered by FTCA, what should an Indian tribe or tribal organization do?

(a) If the contract is with the DHHS, they should immediately inform the Chief, Litigation Branch, Business and Administrative Law Division, Office of General Counsel, Department of Health and Human Services, 330 Independence Avenue S.W., Room 5362, Washington, DC 20201 and the contractor's tort claims liaison.

(b) If the contract is with the Department of the Interior, they should immediately notify the Assistant Solicitor, Procurement and Patents, Office of the Solicitor, Department of the Interior, Room 6511, 1849 C Street N.W., Washington, DC 20240, and the contractor's tort claims liaison.

Subpart N—Post-Award Contract Disputes

§ 900.215 What does this subpart cover?

(a) This subpart covers:

(1) All HHS and DOI self-determination contracts, including construction contracts; and

(2) All disputes regarding an awarding official's decision relating to a self-determination contract.

(b) This subpart does not cover the decisions of an awarding official that are covered under subpart L.

§ 900.216 What other statutes and regulations apply to contract disputes?

(a) The Contract Disputes Act of 1978 (CDA), Public Law 95–563 (41 U.S.C. 601 as amended);

(b) If the matter is submitted to the Interior Board of Contract Appeals, 43 CFR 4.110–126; and

(c) The Equal Access to Justice Act, 5 U.S.C. 504 and 28 U.S.C. 2412 and regulations at 43 CFR 4.601 through 4.619 (DOI) and 45 CFR 13 (DHHS).

§ 900.217 Is filing a claim under the CDA our only option for resolving post-award contract disputes?

No. The Federal government attempts to resolve all contract disputes by agreement at the awarding official's level. These are alternatives to filing a claim under the CDA:

(a) Before issuing a decision on a claim, the awarding official should consider using informal discussions between the parties, assisted by individuals who have not substantially participated in the matter, to aid in resolving differences.

(b) In addition to filing a CDA claim, or instead of filing a CDA claim, the parties may choose to use an alternative dispute resolution mechanism, pursuant to the provisions of the Administrative Dispute Resolution Act, Public Law 101–552, as amended, 5 U.S.C. 581 et seq., or the options listed in section 108(1)(b)(12) of the Indian Self-Determination Act, as applicable.

§ 900.218 What is a claim under the CDA?

(a) A claim is a written demand by one of the contracting parties, asking for one or more of the following:

(1) Payment of a specific sum of money under the contract;

(2) Adjustment or interpretation of contract terms; or

(3) Any other claim relating to the contract.

(b) However, an undisputed voucher, invoice, or other routing request for payment is not a claim under the CDA. A voucher, invoice, or routing request for payment may be converted into a CDA claim if:

(1) It is disputed as to liability or amount; or

(2) It is not acted upon in a reasonable time and written notice of the claim is given to the awarding official by the senior official designated in the contract.

§ 900.219 How does an Indian tribe, tribal organization, or Federal agency submit a claim?

(a) An Indian tribe or tribal organization shall submit its claim in writing to the awarding official. The awarding official shall document the contract file with evidence of the date the claim was received.

(b) A Federal agency shall submit its claim in writing to the contractor's senior official, as designated in the contract.

§ 900.220 Does it make a difference whether the claim is large or small?

Yes. The Contract Disputes Act requires that an Indian tribe or tribal organization making a claim for more than $100,000 shall certify that:

(a) The claim is made in good faith,

(b) Supporting documents or data are accurate and complete to the best of the Indian tribe or tribal organization's knowledge and belief;

(c) The amount claimed accurately reflects the amount believed to be owed by the Federal government; and

(d) The person making the certification is authorized to do so on behalf of the Indian tribe or tribal organization.

§ 900.221 What happens next?

(a) If the parties do not agree on a settlement, the awarding official will issue a written decision on the claim.

(b) The awarding official shall always give a copy of the decision to the Indian tribe or tribal organization by certified mail, return receipt requested, or by any other method which provides a receipt.

§ 900.222 What goes into a decision?

A decision shall:

(a) Describe the claim or dispute;

(b) Refer to the relevant terms of the contract;

(c) Set out the factual areas of agreement and disagreement;

(d) Set out the actual decision, based on the facts, and outline the reasoning which supports the decision; and

(e) Contain the following language:

This is a final decision. You may appeal this decision to the Interior Board of Contract Appeals (IBCA), U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. If you decide to appeal, you shall, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the IBCA and provide a copy to the individual from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, and refer to the decision and contract number. Instead of appealing to the IBCA, you may bring an action in the U.S. Court of Federal Claims or in the United States District Court within 12 months of the date you receive this notice.

§ 900.223 When does an Indian tribe or tribal organization get the decision?

(a) If the claim is for more than $100,000, the awarding official shall issue the decision within 60 days of the day he or she receives the claim. If the awarding official cannot issue a decision that quickly, he or she shall tell you when the decision will be issued.

(b) If the claim is for $100,000 or less, and you want a decision within 60 days, you shall advise the awarding official in writing that you want a decision within that period. If you advise the awarding official in writing that you do want a decision within 60 days, the awarding official shall issue the decision within 60 days of the day he or she receives your written notice.

(c) If your claim is for $100,000 or less and you do not advise the awarding official that you want a decision within 60 days, or if your claim exceeds $100,000 and the awarding official has notified you of the time within which a decision will be issued, the awarding official shall issue a decision within a reasonable time. What is ''reasonable'' depends upon the size and complexity of your claim, and upon the adequacy of the information you have given to the awarding official in support of your claim.

§ 900.224 What happens if the decision does not come within that time?

If the awarding official does not issue a decision within the time required under § 900.223, the Indian tribe or tribal organization may treat the delay as though the awarding official has denied the claim, and proceed according to § 900.222(e),

§ 900.225 Does an Indian tribe or tribal organization get paid immediately if the awarding official decides in its favor?

Yes. Once the awarding official decides that money should be paid under the contract, the amount due, minus any portion already paid, should be paid as promptly as possible, without waiting for either party to file an appeal. Any payment which is made under this subsection will not affect any other rights either party might have. In addition, it will not create a binding legal precedent as to any future payments.

§ 900.226 What rules govern appeals of cost disallowances?

In any appeal involving a disallowance of costs, the Board of Contract Appeals will give due consideration to the factual circumstances giving rise to the disallowed costs, and shall seek to determine a fair result without rigid adherence to strict accounting principles. The determination of allowability shall assure fair compensation for the work or service performed, using cost and accounting data as guides, but not rigid measures, for ascertaining fair compensation.

§ 900.227 Can the awarding official change the decision after it has been made?

(a) The decision of the awarding official is final and conclusive, and not subject to review by any forum, tribunal or government agency, unless an appeal or suit is timely commenced as authorized by the Contract Disputes Act. Once the decision has been made, the awarding official may not change it, except by agreement of the parties, or under the following limited circumstances:

(1) If evidence is discovered which could not have been discovered through due diligence before the awarding official issued the decision;

(2) If the awarding official learns that there has been fraud, misrepresentation, or other misconduct by a party;

(3) If the decision is beyond the scope of the awarding official's authority;

(4) If the claim has been satisfied, released or discharged; or

(5) For any other reason justifying relief from the decision.

(b) Nothing in this subpart shall be interpreted to discourage settlement discussions or prevent settlement of the dispute at any time.

(c) If a decision is withdrawn and a new decision is issued that is not acceptable to the contractor, the contractor may proceed with the appeal based on the new decision. If no new decision is issued, the contractor may proceed under § 900.224.

(d) If an appeal or suit is filed, the awarding official may modify or withdraw his or her final decision.

§ 900.228 Is an Indian tribe or tribal organization entitled to interest if it wins its claim?

Yes. If an Indian tribe or tribal organization wins the claim, it will be entitled to interest on the amount of the award. The interest will be calculated from the date the awarding official receives the claim until the day it is paid. The interest rate will be the rate which the Secretary of the Treasury sets for the Renegotiation Board under the Renegotiation Act of 1951, Public Law 92–41, 26 U.S.C. 1212 and 26 U.S.C. 7447.

§ 900.229 What role will the awarding official play during an appeal?

(a) The awarding official shall provide any data, documentation, information or support required by the IBCA for use in deciding a pending appeal.

(b) Within 30 days of receiving an appeal or learning that an appeal has been filed, the awarding official shall assemble a file which contains all the documents which are pertinent to the appeal, including:

(1) The decision and findings of fact from which the appeal is taken;

(2) The contract, including specifications and pertinent modifications, plans and drawings;

(3) All correspondence between the parties which relates to the appeal, including the letter or letters of claims in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of the proceedings, and affidavits or statements of any witnesses on the matter in dispute, which were made before the filing of the notice of appeal with the IBCA; and

(5) Any additional information which may be relevant.

§ 900.230 What is the effect of a pending appeal?

(a) Indian tribes and tribal organizations shall continue performance of a contract during the appeal of any claims to the same extent they would had there been no dispute.

(b) A pending dispute will not affect or bar the negotiation or award of any subsequent contract or negotiation between the parties.

Subpart O—Conflicts of Interest

§ 900.231 What is an organizational conflict of interest?

An organizational conflict of interest arises when there is a direct conflict between the financial interests of the contracting Indian tribe or tribal organization and:

(a) The financial interests of beneficial owners of Indian trust resources;

(b) The financial interests of the United States relating to trust resources, trust acquisitions, or lands conveyed or to be conveyed pursuant to the Alaska Native Claims Settlement Act 43 U.S.C. 1601 *et seq.*; or

(c) An express statutory obligation of the United States to third parties. This section only applies if the conflict was not addressed when the contract was first negotiated. This section only applies where the financial interests of the Indian tribe or tribal organization are significant enough to impair the Indian tribe or tribal organization's objectivity in carrying out the contract, or a portion of the contract.

§ 900.232 What must an Indian tribe or tribal organization do if an organizational conflict of interest arises under a contract?

This section only applies if the conflict was not addressed when the contract was first negotiated. When an Indian tribe or tribal organization becomes aware of an organizational conflict of interest, the Indian tribe or tribal organization must immediately disclose the conflict to the Secretary.

§ 900.233 When must an Indian tribe or tribal organization regulate its employees or subcontractors to avoid a personal conflict of interest?

An Indian tribe or tribal organization must maintain written standards of conduct to govern officers, employees, and agents (including subcontractors) engaged in functions related to the management of trust assets.

§ 900.234 What types of personal conflicts of interest involving tribal officers, employees or subcontractors would have to be regulated by an Indian tribe?

The Indian tribe or tribal organization would need a tribally-approved mechanism to ensure that no officer, employee, or agent (including a subcontractor) of the Indian tribe or tribal organization reviews a trust transaction in which that person has a financial or employment interest that conflicts with that of the trust beneficiary, whether the tribe or an allottee. Interests arising from membership in, or employment by, an Indian tribe or rights to share in a tribal claim need not be regulated.

§ 900.235 What personal conflicts of interest must the standards of conduct regulate?

The standards must prohibit an officer, employee, or agent (including a subcontractor) from participating in the review, analysis, or inspection of trust transactions involving an entity in which such persons have a direct financial interest or an employment relationship. It must also prohibit such officers, employees, or agents from accepting any gratuity, favor, or anything of more than nominal value, from a party (other than the Indian tribe) with an interest in the trust transactions under review. Such standards must also provide for sanctions or remedies for violation of the standards.

§ 900.236 May an Indian tribe elect to negotiate contract provisions on conflict of interest to take the place of this regulation?

Yes. An Indian tribe and the Secretary may agree to contract provisions, concerning either personal or organizational conflicts, that address the issues specific to the program and activities contracted in a manner that provides equivalent protection against conflicts of interest to these regulations. Agreed-upon contract provisions shall be followed, rather than the related provisions of this regulation. For example, the Indian tribe and the Secretary may agree that using the Indian tribe's own written code of ethics satisfies the objectives of the personal conflicts provisions of this regulation, in whole or in part.

Subpart P—Retrocession and Reassumption Procedures

§ 900.240 What does retrocession mean?

A retrocession means the return to the Secretary of a contracted program, in whole or in part, for any reason, before the expiration of the term of the contract.

§ 900.241 Who may retrocede a contract, in whole or in part?

An Indian tribe or tribal organization authorized by an Indian tribe may retrocede a contract.

§ 900.242 What is the effective date of retrocession?

The retrocession is effective on the date which is the earliest date among:

(a) One year from the date of the Indian tribe or tribal organization's request;

(b) The date the contract expires; or

(c) A mutually agreed-upon date.

§ 900.243 What effect will an Indian tribe or tribal organization's retrocession have on its rights to contract?

An Indian tribe or tribal organization's retrocession shall not negatively affect:

(a) Any other contract to which it is a party;

(b) Any other contracts it may request; and

(c) Any future request by the Indian tribe or tribal organization to contract for the same program.

§ 900.244 Will an Indian tribe or tribal organization's retrocession adversely affect funding available for the retroceded program?

No. The Secretary shall provide not less than the same level of funding that would have been available if there had been no retrocession.

§ 900.245 What obligation does the Indian tribe or tribal organization have with respect to returning property that was used in the operation of the retroceded program?

On the effective date of any retrocession, the Indian tribe or tribal organization shall, at the request of the Secretary, deliver to the Secretary all requested property and equipment provided under the contract which have a per item current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of $5,000 at the time of the retrocession.

§ 900.246 What does reassumption mean?

Reassumption means rescission, in whole or in part, of a contract and assuming or resuming control or operation of the contracted program by the Secretary without consent of the Indian tribe or tribal organization. There

are two types of reassumption: emergency and non-emergency.

§900.247 Under what circumstances is a reassumption considered an emergency instead of non-emergency reassumption?

(a) A reassumption is considered an emergency reassumption if an Indian tribe or tribal organization fails to fulfill the requirements of the contract and this failure poses:

(1) An immediate threat of imminent harm to the safety of any person; or

(2) Imminent substantial and irreparable harm to trust funds, trust lands, or interest in such lands.

(b) A reassumption is considered a non-emergency reassumption if there has been:

(1) A violation of the rights or endangerment of the health, safety, or welfare of any person; or

(2) Gross negligence or mismanagement in the handling or use of:

(i) Contract funds;

(ii) Trust funds;

(iii) Trust lands; or

(iv) Interests in trust lands under the contract.

§900.248 In a non-emergency reassumption, what is the Secretary required to do?

The Secretary must:

(a) Notify the Indian tribes or tribal organizations served by the contract and the contractor in writing by certified mail of the details of the deficiencies in contract performance;

(b) Request specified corrective action to be taken within a reasonable period of time, which in no case may be less than 45 days; and

(c) Offer and provide, if requested, the necessary technical assistance and advice to assist the contractor to overcome the deficiencies in contract performance. The Secretary may also make a grant for the purpose of obtaining such technical assistance as provided in section 103 of the Act.

§900.249 What happens if the contractor fails to take corrective action to remedy the contract deficiencies identified in the notice?

The Secretary shall provide a second written notice by certified mail to the Indian tribes or tribal organizations served by the contract and the contractor that the contract will be rescinded, in whole or in part.

§900.250 What shall the second written notice include?

The second written notice shall include:

(a) The intended effective date of the reassumption;

(b) The details and facts supporting the intended reassumption; and

(c) Instructions that explain the Indian tribe or tribal organization's right to a formal hearing within 30 days of receipt of the notice.

§900.251 What is the earliest date on which the contract will be rescinded in a non-emergency reassumption?

The contract will not be rescinded by the Secretary before the issuance of a final decision in any administrative hearing or appeal.

§900.252 In an emergency reassumption, what is the Secretary required to do?

(a) Immediately rescind, in whole or in part, the contract;

(b) Assume control or operation of all or part of the program; and

(c) Give written notice to the contractor and the Indian tribes or tribal organizations served.

§900.253 What shall the written notice include?

The written notice shall include the following:

(a) A detailed statement of the findings which support the Secretary's determination;

(b) A statement explaining the contractor's right to a hearing on the record under §900.160 and §900.161 within 10 days of the emergency reassumption or such later date as the contractor may approve;

(c) An explanation that the contractor may be reimbursed for actual and reasonable ''wind up costs'' incurred after the effective date of the rescission; and

(d) A request for the return of property, if any.

§ 900.254 May the contractor be reimbursed for actual and reasonable "wind up costs" incurred after the effective date of rescission?

Yes.

§ 900.255 What obligation does the Indian tribe or tribal organization have with respect to returning property that was used in the operation of the rescinded contract?

On the effective date of any rescission, the Indian tribe or tribal organization shall, at the request of the Secretary, deliver to the Secretary all property and equipment provided under the contract which has a per item current fair market value, less the cost of improvements borne by the Indian tribe or tribal organization, in excess of $5,000 at the time of the retrocession.

§ 900.256 Will a reassumption adversely affect funding available for the reassumed program?

No. The Secretary shall provide at least the same level of funding that would have been provided if there had been no reassumption.

CHAPTER VI—
OFFICE OF THE ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

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PART 1000—[RESERVED]

PART 1001—SELF-GOVERNANCE PROGRAM

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1001.10 Selection criteria for other planning and negotiating financial assistance.

AUTHORITY: 25 U.S.C. 450 note, 458aa–458gg.

SOURCE: 60 FR 8554, Feb. 15, 1995, unless otherwise noted.

§ 1001.1 Purpose.

The purpose of this rule is to establish the process for tribes to apply for entry into the Self-Governance program and to establish the selection criteria by which the Department will identify eligible tribes and select tribes to begin the negotiations process.

§ 1001.2 Applicant eligibility.

Any tribe or consortium of tribes seeking inclusion in the applicant pool must meet the following eligibility criteria:

(a) Be a federally recognized tribe or a consortium of federally recognized tribes as defined in Public Law 93–638.

(b) Document, with an official action of the tribal governing body, a formal request to enter negotiations with the Department of Interior (Department) under the Tribal Self-Governance Act authority. In the case of a consortium of tribes, the governing body of each participating tribe must authorize participation by an official action by the tribal governing body.

(c) Demonstrate financial stability and financial management capability by furnishing organization-wide single audit reports as prescribed by Public Law 96–502, the Single Audit Act of 1984, for the previous three years. These audits must not contain material audit exceptions. In the case of tribal consortiums, each signatory to the agreement must meet this requirement. Non-signatory tribes participating in the consortium do not have to meet this requirement.

(d) Successfully complete the planning phase for self-governance. A final planning report must be submitted which demonstrates that the tribe has conducted—

(1) Legal and budgetary research; and

(2) Internal tribal government and organizational planning.

(e) To be included in the applicant pool, tribes or tribal consortiums may submit their applications at any time. The application should state which year the tribe desires to enter negotiations.

§ 1001.3 Priority ranking for negotiations.

In addition to the eligibility criteria identified above, a tribe or consortium of tribes seeking priority ranking for negotiations must submit a description of the efforts of the tribe or consortium to seek to enter negotiations and/or prepare for operations under the self-governance option. This narrative should identify any activities that the tribe has pursued, carefully identifying and documenting the dates involved, including, but not limited to, the following:

(a) Prior planning activities related to self-governance, noting the source of funding for the planning activity and whether or not it was sanctioned by the Office of Self-Governance (OSG), including documentation as applicable.

(b) Prior efforts to secure planning and/or negotiation grants.

(c) Meetings with the OSG or other Departmental offices in which the tribe expressed an interest in participating in the Self-Governance Project.

(d) Correspondence between the tribe and the Department in which the tribe has expressed an interest in participating in the Self-Governance Project.

(e) All actions of the tribal governing body related to participating in the self-governance option.

§1001.4 Application review and approval.

Upon receipt of an application, the OSG will review the package and determine whether or not it is complete. Upon determination that it is complete, the name of the tribe or consortium will be included in the official applicant pool. Incomplete submissions will be returned with the deficiencies identified. Revised applications may be resubmitted for consideration at any time.

§1001.5 Application review and selection process for negotiations for funding agreements.

Upon acceptance into the applicant pool, the OSG will assign to each tribe or consortium a ranking relative to other applicants based upon the date the OSG receives the complete application package. This ranking will constitute a master list that will be maintained and updated on a continuous basis from year to year. When receipt dates are the same for two or more applications, several other factors will be considered in determining the placement of the tribe or consortium on the list. These factors are identified in priority order as follows:

(a) Designation by the Congress through report language that a tribe should be considered for participation. These designations will be considered based upon the actual language of the report.

(b) Documentation of OSG sanctioning of the tribe's self-governance planning and subsequent evidence of actual planning by the tribe.

(c) Submission of a completed planning or negotiation grant application in the previous year.

(d) A signed agreement pursuant to the Indian Health Service (IHS) self-governance project.

(e) Receipt of a planning grant awarded by the IHS.

§1001.6 Submitting applications.

(a) Applications for inclusion in the applicant pool will be accepted on an on-going basis.

(b) Applications may be mailed or hand-delivered.

(c) Applications for negotiations in 1996 that are mailed must be postmarked no later than May 16, 1995.

(d) Applications must be sent to: Director, Office of Self Governance, Department of the Interior, 1849 C Street, NW., MIB RM/MS–2548, Washington, DC 20240.

§1001.7 Availability, amount, and number of planning and negotiation grants.

(a) What is the purpose of this section? This section describes how to apply for planning and negotiation grants authorized by section 402(d) of the Act to help meet tribal costs incurred:

(1) In meeting the planning phase requirement of Pub. L. 103–413, including planning to negotiate non-BIA programs, services, functions and activities; and

(2) In conducting negotiations.

(b) What types of grants are available? Three categories of grants may be available:

(1) Negotiation grants for tribes/consortia selected from the applicant pool as described in §1001.5 of these regulations;

(2) Planning grants for tribes/consortia requiring advance funding to meet the planning phase requirement of Pub. L. 103–413; and

(3) Financial assistance for tribes/consortia to plan for negotiating for non-BIA programs, services, functions and activities, as described in §1001.10.

(c) Will grants always be made available to meet the planning phase requirement as described in section 402(d) of Pub. L. 103–413? No. Grants to cover some or all of the planning costs that a tribe/consortium may incur may be made available depending upon the availability of funds appropriated by Congress. We will publish notice of availability of grants in the FEDERAL REGISTER as described in this section.

(d) May a tribe use its own resources to meet its planning and negotiation expenses in preparation for entering into self-governance? Yes. A tribe/consortium may use its own resources to meet these costs. Receiving a grant is not necessary to meet the planning

phase requirement of the Act or to negotiate a compact and annual funding agreement.

(e) What happens if there are insufficient funds to meet the anticipated tribal requests for planning and negotiation grants in any given year? If appropriated funds are available but insufficient to meet the total requests from tribes/consortia, we will give first priority to those that have been selected from the applicant pool to negotiate an annual funding agreement. We will give second priority to tribes/consortia that require advance funds to meet the planning requirement for entry into the self-governance program. We will give third priority to tribes/consortia that require negotiation/planning funds to negotiate for DOI non-BIA programs.

(f) How many grants will the Department make each year and what funding will be available? The number and size of grants awarded each year will depend on Congressional appropriations and tribal interest. Each year, we will publish a notice in the FEDERAL REGISTER which provides relevant details about the application process, including: The funds available, timeframes, and requirements for negotiation and advance planning specified in this part.

[61 FR 17831, Apr. 23, 1996]

§ 1001.8 Selection criteria for tribes/consortia to receive a negotiation grant.

(a) Who may be selected to receive a negotiation grant? Any tribe/consortium that has been accepted into the applicant pool in accordance with § 1001.5 and has been selected to negotiate a self-governance annual funding agreement is eligible to apply for a negotiation grant. Each year, we will publish a notice in the FEDERAL REGISTER with all relevant details as to how tribes/consortia which have been selected can apply for negotiation grants.

(b) What must a tribe/consortium do to receive a negotiation grant?

(1) To receive a negotiation grant, a tribe/consortium must:

(i) Be selected from the applicant pool to negotiate an annual funding agreement;

(ii) Be identified as eligible to receive a negotiation grant; and

(iii) Not have received a negotiation grant within the 3 years preceding the date of the latest FEDERAL REGISTER announcement described in § 1001.7.

(2) The tribe/consortium must submit a letter affirming its readiness to negotiate and formally request a negotiation grant to prepare for and negotiate a self-governance agreement. These grants are not competitive.

(c) May a selected tribe negotiate without applying for a negotiation grant? Yes. In this case, the tribe should notify us in writing so that funds can be reallocated for other grants.

[61 FR 17832, Apr. 23, 1996]

§ 1001.9 Selection criteria for tribes/consortia seeking advance planning grant funding.

(a) Who is eligible to apply for a planning grant that will be awarded before a tribe/consortium is admitted into the applicant pool? Any tribe/consortium that is not a self-governance tribe and needs advance funding in order to complete the planning phase requirement may apply. Tribes/consortia that have received a planning grant within 3 years preceding the date of the latest FEDERAL REGISTER announcement described in § 1001.7 are not eligible.

(b) What must a tribe/consortium seeking a planning grant submit in order to meet the planning phase requirements? A tribe/consortium must submit the following material:

(1) A tribal resolution or other final action of the tribal governing body indicating a desire to plan for tribal self-governance;

(2) Audits from the last 3 years which document that the tribe meets the requirement of being free from any material audit exception;

(3) A proposal that describes the tribe's/consortium's plans to conduct:

(i) Legal and budgetary research, and

(ii) Internal tribal government and organization planning;

(4) A timeline indicating when planning will start and end; and

(5) Evidence that the tribe/consortium can perform the tasks associated with its proposal (i.e., submit resumes

and position descriptions of key staff or consultants to be used).

(c) How will tribes/consortia know when and how to apply for planning grants? Each year, we will publish in the FEDERAL REGISTER a notice of the availability of planning grants for additional tribes as described in § 1001.7. This notice will identify the specific details for applying.

(d) What criteria will be used to award planning grants to those tribes/consortia requiring advance funding to meet the planning phase requirement of Public Law 103–413? Advance planning grants are discretionary and based on need. The following criteria will be used to determine whether to award a planning grant to a tribe/consortium before the tribe is being selected into the applicant pool:

(1) A complete application as described in §§ 1001.9(b) and 1001.9(c);

(2) A demonstration of financial need. We will rank applications according to the percentage of tribal resources to total resources as indicated in the latest A–128 audit. We will give priority to applications that demonstrate financial need by having a lower level of tribal resources as a percent of total resources; and

(3) Other factors that demonstrate the readiness of the tribe/consortium to enter into a self-governance agreement, including previous efforts of the tribe/consortium to participate in self-governance.

(e) Can tribes/consortia that receive advance planning grants also apply for a negotiation grant? Yes. Tribes/consortia that receive advance planning grants may submit a completed application to be included in the applicant pool. Once approved for inclusion in the applicant pool, the tribe/consortium may apply for a negotiation grant according to the process identified in § 1001.7 above.

(f) When and how will a tribe/consortium know whether it has been selected to receive an advance planning grant? Within 30 days of the deadline for submitting applications we will notify the tribe/consortium by letter whether it has been selected to receive an advance planning grant.

[61 FR 17832, Apr. 23, 1996]

§ 1001.10 Selection criteria for other planning and negotiating financial assistance.

(a) What is the purpose of this section? This section describes how to apply for other financial assistance for planning and negotiating of a DOI non-BIA program, service, function or activity that may be available, as well as the selection process.

(b) Are there other funds that may be available to self-governance tribes/consortia for planning and negotiating with DOI non-BIA bureaus? Yes. Tribes/consortia may contact the Director, Office of Self-Governance to determine if funds are available for the purpose of planning and negotiating with DOI non-BIA bureaus under this section. A tribe/consortium may also request information from a DOI non-BIA bureau on any funds which may be available from that bureau.

(c) Who is eligible to apply for financial assistance to plan and negotiate for a DOI non-BIA program? Any existing self-governance tribe/consortium is eligible.

(d) Under what circumstances may planning and negotiation financial assistance be made available to tribes/consortia? At the discretion of the Director, grants may be awarded when requested by the tribe and coordinated with the DOI non-BIA agency involved.

(e) How does the tribe/consortium apply for a grant to plan and negotiate for a DOI non-BIA program? When such funds are available, we will publish a notice of their availability and a deadline for submitting applications for such grants in the FEDERAL REGISTER as indicated in § 1001.7.

(f) What must be included in the application? The application must include the following:

(1) The tribal resolution or other final action of the tribal governing body indicating that the tribe/consortium intends to negotiate for a DOI non-BIA program;

(2) A copy of the proposal or summary that was submitted to the DOI non-BIA bureau;

(3) A time line indicating when planning will begin and end;

(4) The planning resources from all other sources that are approved and/or

anticipated for the planning activity; and

(5) The amount requested and a justification of why it is needed by the tribe/consortium.

(g) What criteria will we use to award grants to those tribes/consortia requesting financial assistance to plan and negotiate for a DOI non-BIA program? The award of such grants is discretionary. After consulting with the requesting tribe/consortium and the appropriate DOI non-BIA bureau, the Director will determine whether to award a grant to plan and negotiate for a DOI non-BIA program. The determination will be based upon the complexity of the project, the availability of resources from all other sources, and the relative need of the tribe/consortium to receive such funds for the successful completion of the planning and negotiating activity, as determined by the percentage of tribal resources to total resources as indicated in the latest A–128 audit. All decisions to award or not to award grants as described in paragraphs (e) and (f) of this section are final for the Department.

[61 FR 17832, Apr. 23, 1996]

CHAPTER VII—OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS, DEPARTMENT OF THE INTERIOR

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PART 1200—AMERICAN INDIAN TRUST FUND MANAGEMENT REFORM ACT

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AUTHORITY: 25 U.S.C. 4001.

SOURCE: 61 FR 67932, Dec. 26, 1996, unless otherwise noted.

Subpart A—General Provisions

§1200.1 Purpose of this regulation.

This part describes the processes by which Indian tribes can manage tribal funds currently held in trust by the United States. It defines how tribes may withdraw their funds from trust status; how they may return funds to trust; and how they may request technical assistance or grants to help prepare plans to manage funds or to ensure the capability to manage those funds.

§1200.2 Definitions.

As used in this part:

Act means the American Indian Trust Fund Management Reform Act of 1994 (Pub. L. 103–412, 108 Stat. 4239, 25 U.S.C. 4001).

Agency Superintendent means the official in charge of a Bureau of Indian Affairs Agency.

Area Director means the official in charge of a Bureau of Indian Affairs area office.

Bureau or *BIA* means the Bureau of Indian Affairs, Department of the Interior.

Department or *DOI* means the Department of the Interior.

General Counsel means the attorney for the tribe.

OST means the Office of the Special Trustee for American Indians, Department of the Interior.

OTFM means the Office of Trust Funds Management, Department of the Interior.

Resolution means the formal manner in which a tribal government expresses its legislative will.

Secretary means the Secretary of the Interior or his/her designee.

Solicitor means the Office of the Solicitor, Department of the Interior.

Special Trustee means the Special Trustee for American Indians appointed under Title III of the Act.

Tribal council means the elected or appointed governing officials of any tribe which is recognized by the Secretary.

Tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act which is federally recognized by the U.S. Government for special programs and services provided by the Secretary to Indians because of their status as Indians. For this purpose, it also means two or more tribes joined for any purpose, the joint assets of which include funds held in trust by the Secretary. An example of this would be the KCA (consisting of the Kiowa, Comanche and Apache Tribes).

Us means the Department of the Interior, i.e., the Secretary of the Interior or his/her designee.

We means the Department of the Interior, i.e., the Secretary of the Interior or his/her designee.

§ 1200.3 What is the Department's policy on tribal management of trust funds?

(a) We will give tribes as much responsibility as they desire for the management of their tribal funds that we currently hold in trust.

(b) Title II of the American Indian Trust Fund Management Reform Act, implemented by these regulations, offers tribes one approach for assuming increased management of their funds that we now hold in trust and administer. Under Title II, a tribe may completely remove its funds from Federal trust status and manage them as it wishes, subject to the requirements and conditions in this part. When a tribe withdraws its funds under this part, it may invest those funds in equities or other investment vehicles that are statutorily unavailable to us.

§ 1200.4 May tribes exercise increased direction over their trust funds and retain the protections of Federal trust status?

Yes. The Tribal Self-Governance Act (25 U.S.C. 458) and the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) provide other options for trust funds management. A tribe may choose to manage its trust funds under the provisions of these Acts if it wishes. These options are covered by 25 CFR part 900 (the ''Indian Self-Determination and Education Assistance Act Program'') and 25 CFR part 1000 (the ''Self-Governance Program'').

§ 1200.5 What are the advantages and disadvantages of managing trust funds under the options in § 1200.4?

Under these other options, the funds remain in Federal trust status and the tribe can exercise a range of control over their management. However, the tribe has fewer investment options than it has when it withdraws its funds completely from trust status. If a tribe chooses to keep its funds in trust status, the tribe is subject to the same statutory investment restrictions that bind us. That means that the tribe's investments are limited to bank deposits and securities guaranteed by the United States. (See 25 U.S.C. 162a for specific statutory investment restrictions.)

§ 1200.6 Do these regulations tell tribes how to receive future income directly rather than have the government continue to collect it?

No. These regulations apply only to the withdrawal of funds which are in trust. Some of these funds come from the sale or lease of trust resources. Even if a tribe withdraws its funds, we will collect and manage future income. If a tribe wishes to receive future income directly, it should contact the OST/OTFM staff at its agency or area office to find out how to do this.

§ 1200.7 Information collection.

The information collection requirements contained in subpart B of this part, Application to Withdraw Tribal Funds from Trust Status and subpart D

of this part, Application to Withdraw Tribal Funds from Trust Status-General and Specific Budget Technical Assistance, have been approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.* and assigned clearance numbers 1035–001 (subpart B), and 1035–002 and 1035–003 (subpart D). Information collected in § 1200.13 (How does a tribe apply to withdraw funds?) will be used to determine the eligibility of applicants, and the capability of tribes or their contractors to manage and invest large blocks of funds. Information collected in § 1200.43, (How can a tribe apply for technical assistance?) will be used to determine the eligibility of applicants, as well as the level of need for technical assistance, in order for tribes to develop Management Plans and to complete the application for withdrawal process.

Subpart B—Withdrawing Tribal Funds From Trust

§ 1200.10 Who is eligible to withdraw their tribal funds from trust?

Any tribe for whom we manage funds in trust.

§ 1200.11 What funds may be withdrawn?

A tribe may withdraw some or all funds that we hold in trust if we approve a plan that it submits under this part.

§ 1200.12 What limitations and restrictions apply to withdrawn funds?

(a) A tribe may withdraw funds appropriated to satisfy judgments of the Indian Claims Commission (ICC) and the Court of Federal Claims and that we hold under the Indian Judgment Funds Use and Distributions Act (25 U.S.C. 1401) or another act of Congress if:

(1) The tribe uses the funds as specified in the previously approved judgment fund plan, and;

(2) The tribe withdraws only funds held for Indian tribes and does not include any funds held for individual tribal members.

(b) A tribe may withdraw funds appropriated to satisfy settlement agreements relating to certain tribal claims and that we hold and manage for the tribe pursuant to an act of Congress if:

(1) The tribe uses the funds as specified in the previously approved settlement act plan;

(2) The tribe withdraws only funds held for Indian tribes and does not include any funds held for individual tribal members; and

(3) It is determined that there is no provision in the act or settlement agreement requiring that the funds remain in trust to implement the act or agreement that cannot be waived.

(c) Tribal funds commonly known as ''Proceeds of Labor'' funds, usually income to trust resources, are generally withdrawn under normal tribal budgeting procedures, but may also be withdrawn from trust under this part. These funds may be returned to trust under the provisions of subpart C of this part.

§ 1200.13 How does a tribe apply to withdraw funds?

The tribe must submit four copies of its application and the attachments listed below to: Director, Office of Trust Funds Management, Department of the Interior, 505 Marquette NW, Suite 1000, Albuquerque, NM 87102. We will notify the tribe if the application is incomplete and will help the tribe complete the application if requested. When we determine that the application is complete, we will send copies to the appropriate agency superintendent and area director, the Special Trustee and the Solicitor. Each application package must contain the items listed below.

(a) Proof that the tribe has notified its members of its intent to remove funds from trust and that, when the request is approved, the tribe and not the United States Government will be liable for funds management. Notification must be by the method(s) that the tribe customarily uses to notify its members of significant tribal actions. The notification must identify the specific funds to be withdrawn.

(b) A tribal resolution that:

(1) Expressly authorizes the withdrawal of the funds and indicates the (approximate) dollar amount of the funds to be withdrawn;

(2) Expressly acknowledges that the funds, once withdrawn in accordance with the Act, will no longer be held in trust status by the United States, and that we have no further liability or responsibility for the funds; and

(3) Acknowledges that:

(i) Neither we nor the tribe necessarily accept the account balances at the time of withdrawal as accurate; and

(ii) Neither we nor the tribe have waived any rights regarding the balances, including the right to seek compensation for incorrect balances.

(c) A copy of a formal agreement between the tribe and the manager of the funds to be withdrawn, in which the manager agrees to:

(1) Comply with the terms of the plan we approve under § 1200.15 and make only those changes that conform to revision procedures in the approved plan and the requirements of § 1200.19; and

(2) Transfer funds to the tribe or another manager only after receiving a valid tribal resolution calling for this transfer and proof that the tribe has notified its members of intent to transfer the funds. The resolution must clearly state that:

(i) The funds are being withdrawn to be reinvested by the tribe in a manner consistent with the goals and strategies of the approved plan; and

(ii) The fund managers will continue to follow any previously approved distribution plan conditions.

(d) A legal opinion by the tribe's attorney or its general counsel that:

(1) The resolution referred to in paragraph (b) of this section was enacted under procedures established by the tribe's organic documents or oral tradition;

(2) The tribal governing body has the legal authority to withdraw funds from trust status and that the withdrawal does not require a referendum vote or other procedure beyond a tribal council resolution; and

(3) If the funds to be withdrawn are judgment or settlement funds, that the tribe's plan for managing the funds meets the requirements of any applicable judgment fund use and distribution plan or settlement act.

(e) The results of a tribal referendum, if one was held.

(f) If the funds to be withdrawn are judgment or settlement funds, a copy of the act and/or plan that sets out the conditions for the uses of the funds or income from them.

(g) A management plan as provided for in § 1200.14.

§ 1200.14 What must the Tribal Management Plan contain?

The Tribal Management Plan required by § 1200.13 must include each of the following:

(a) Tribal investment goals and the strategy for achieving them.

(b) A description of the protection against the substantial loss of principal, as set forth in § 1200.16.

(c) A copy of the tribe's ordinances and procedures for managing or overseeing the management of the funds to be withdrawn. These must include adequate protections against fraud, abuse, and violations of the management plan.

(d) A description of the tribe's previous experience managing or overseeing the management of invested funds. This should include factual data of past performance of tribally-managed funds (i.e., audited reports) and the identity and qualifications of the tribe's investment officer.

(e) A description of the capability of all of the individuals or investment institutions that will be involved in managing and investing the funds for the tribe. Provide copies of State or Federal security applications for account executive(s).

(1) Investment entities named must submit:

(i) Ownership information (including Central Registry Depository (CRD) numbers);

(ii) Asset size and capitalization;

(iii) Assets under management;

(iv) Performance statistics on managed accounts for the past 5 years; and

(v) Any adverse actions by licensing and/or regulatory bodies within the past 5 years.

(2) In addition, we may ask about:

(i) Soft dollar arrangements;

(ii) Affiliation with broker dealers, banks, insurance and/or investment companies;

(iii) Research done in house;

(iv) Recent changes in active portfolio managers; and

(v) Any other information necessary to make an adequate evaluation of the proposed plan.

(f) A description of how the plan will ensure that the fund manager will comply with any conditions established in judgment fund plans or settlement acts.

(g) Proof of liability insurance of the investment firm.

(h) Proof of liability insurance that protects against fraud for those Tribal Council members with authority to disburse funds. In many tribes the chairperson, and the comptroller and/or the tribal treasurer, for example, would be the positions having this authority.

(i) A plan for custodianship of investment securities that includes:

(1) Name of persons in the tribe who can direct the custodian;

(2) Name of the custodian;

(3) Copy of intended custodian agreement;

(4) Size of custodian operation;

(5) Disclosure of any security lending provisions; and

(6) Insurance coverage.

(j) A tribal council agreement to provide an annual audit and report on performance of withdrawn funds to the tribal membership, with a copy to: Office of the Special Trustee for American Indians, Department of the Interior, MS–5140, 1849 C Street NW, Washington, DC, 20240. This agreement must include:

(1) A statement that the copy to the Special Trustee is for information only, and infers no liability on our part regarding the audit results, nor does it infer a requirement for us to take any action whatsoever; and

(2) A description of the steps (including audit performance and reporting) the tribe will take to ensure its membership that the tribe is continuing to comply with the terms of the plan submitted and approved pursuant to judgment fund limitations (if any) and/or the terms of the Act.

(k) The proposed date for transfer of funds.

(l) A statement as to whether the tribe chooses to receive the withdrawal as a cash balance transfer, as a transfer of marketable investments that we own for the tribe, or as a combination of the two.

(1) A cash balance transfer may require us to sell bonds, notes, or other investments that we purchased when investing the tribe's monies.

(2) We cannot transfer non-marketable securities to a tribe. We can only purchase and hold them and must sell them back to the U.S. Treasury.

(3) If we sell a tribe's security at a loss (i.e., when market value is less than book value or carrying value) we will first notify the tribe. The tribe must instruct us to proceed with the sale and must agree not to hold us responsible for the loss before we will make the sale.

(4) If the tribe asks us to transfer marketable securities, upon proper instructions from the new tribal custodian, we will order our custodian to physically transfer the proper security to the new custodian on the agreed upon date.

(m) Agreement that judgment award funds will have segregated accounts.

(n) A description of the procedures for amending or revising the plan.

§ 1200.15 What is the approval process for management plans?

The Secretary will approve or disapprove each management plan, based in part upon our recommendation.

(a) We will determine the completeness of the application, provide for adequate professional review of the application and the management plan, and provide technical assistance as necessary to make an application complete.

(b) We will coordinate with area directors in confirming authority of tribal governments to make requests.

(c) We will approve or disapprove a request within 90 calendar days of receiving a completed application. This 90-day period does not include time that we spend awaiting a response from the tribe for additional information that we have requested. All determinations will be in writing, and all responses will be by certified mail.

(d) If we find that a plan does not meet the criteria in § 1200.16, we will notify the tribe of shortcomings of the request, and allow the tribe to respond

before recommending formal disapproval.

(e) Before final approval, we will reach agreement with the tribe on how many days after final approval we will transfer the funds. We will transfer the funds as soon after final approval as the tribe or manager is ready to receive them, unless we need additional time to sell existing instruments.

§ 1200.16 What criteria will be used in evaluating the management plan?

Each plan must be approved by the appropriate tribal governing body, and must be accompanied by a resolution approving the plan. The plan must be reasonable in light of the trust responsibility and the principles of Indian self-determination, and other appropriate factors, including, but not limited to, the factors listed below:

(a) We will evaluate the individuals or entities that will manage the funds to be withdrawn, or that will advise the tribe on investing the funds to be withdrawn in order to determine if they have the capability and experience to manage the funds. Among the elements we will evaluate are: the number of years in business, the performance record for funds management, and the ability to compensate the tribe if the entity is found liable for failing to comply with the tribe's management plan (i.e., its assets, bonding, and insurance).

(b) We will review the tribe's experience in managing investments. We will compare this experience to the complexity of the proposed management plan to determine whether the tribe has the experience to manage its proposed plan or whether it should begin with a less complex approach.

(c) We will evaluate the tribe's internal audit and control systems for overseeing or monitoring its investment activity.

(d) We will evaluate the adequacy of protection against substantial loss of principal. Our determination will include a thorough evaluation of the tribe's investment plan including:

(1) The goals and objectives;

(2) The proposed uses of the fund in order to meet business objectives;

(3) The size and diversity of the investment portfolio (for example, the class of stocks and the mixture of types of investments);

(4) The financial condition of the tribe;

(5) The inherent riskiness of the proposed investments; and

(6) The tribe's projected need and proposed timeframes to draw down the funds being invested or the income from them.

(e) We will determine the likelihood that the plan will be followed. We will base this determination on the contents of the agreement between the tribe and the fund manager and other appropriate factors.

§ 1200.17 What special criteria will be used to evaluate management plans for judgment or settlement funds?

For judgment or settlement funds, in addition to the criteria in § 1200.16, we will determine if the plan adequately provides for compliance with any conditions, uses of funds, or other requirements established by the appropriate judgment fund plan or settlement act.

§ 1200.18 When does the Department's trust responsibility end?

Our trust responsibility for funds withdrawn under this part ends on the date that the funds are withdrawn. However at the time of withdrawal neither we nor the tribe may be deemed to have accepted the account balance at the time of withdrawal as accurate; or waived any rights regarding the balance and our ability to seek compensation.

§ 1200.19 How can the plan be revised?

Once a tribe has withdrawn its funds, the tribe may revise its plan without our approval. All revisions should conform to the procedures outlined in the approved management plan. The tribe should inform its members of all revisions to a plan through normal tribal procedures before the revisions are implemented.

§ 1200.20 How can a tribe withdraw additional funds?

(a) If a tribe has withdrawn funds under an approved tribal management plan and wishes to withdraw additional funds that will be managed under the

same plan, it need not submit a complete new application. The tribe must:

(1) Notify us of the additional amount it intends to withdraw and whether the funds to be withdrawn are in kind or cash. (Written notification should be provided to our address in § 1200.13);

(2) Send us a tribal resolution approving the new withdrawal and certifying that the funds are being withdrawn subject to the same conditions and that they will be managed under the plan in the original approved application;

(3) Send us a copy of the most recent compliance audit or investment report.

(b) After we finish our review we will release the additional funds, unless the compliance audit or investment report indicates that the tribe is not complying with its management plan. In this case, we will not release the additional funds until the tribe demonstrates that it is complying with the management plan.

§ 1200.21 How may a tribe appeal denials under this part?

If we deny a request or do not approve an application within 90 days of a request, the tribe may address any problems that we identify and resubmit a revised request, seek technical assistance, or appeal the denial under 43 CFR part 4.

Subpart C—Returning Tribal Funds to Trust

§ 1200.30 How does a tribe notify the Department if it wishes to return withdrawn funds to Federal trust status?

If a tribe elects to return some or all of the funds it has withdrawn from Federal trust status pursuant to this Act, it must first notify us in writing at our address in § 1200.13. This notification must provide a proposed date for the return of the funds, as well as the amount of funds to be returned, or actual securities to be delivered to the appropriate custodian.

§ 1200.31 What part of withdrawn funds can be returned to trust?

A tribe may return all or a portion of the principal which was removed from trust under this Act along with earnings and profits. We will verify the amount declared for earnings before we accept a return. We will accept any amount less than the original principal amount as a principal amount.

§ 1200.32 How often can funds be returned?

Tribes may return all or part of withdrawn funds no more than twice a year, beginning no sooner than six months after date of withdrawal, except with approval of the Secretary.

§ 1200.33 How can funds be returned?

Funds may be returned either as cash or securities, which meet the requirements for investments in 25 U.S.C. 162a. Cash can be transferred to the US Treasury by Electronic Funds Transfers (EFT), or the Automated Clearing House (ACH) process. Tribes must coordinate the transfer of ownership in securities with us to ensure proper credit to the tribe. The securities must meet investment restrictions contained in 25 U.S.C. 162a.

§ 1200.34 Can a tribe withdraw redeposited funds?

Yes. If a tribe wishes to withdraw redeposited funds from Federal trust status, it must submit a written request to do so, accompanied by a new resolution and any revisions it wishes to make in its original management plan.

Subpart D—Technical Assistance

§ 1200.40 How will the Department provide technical assistance for tribes?

(a) We will provide direct or contract technical assistance, in accordance with appropriations availability to tribes for developing, implementing, and managing Indian trust fund investment plans. We will ensure that our legal, financial and other expertise is made fully available to advise tribes in developing, implementing, and managing investment plans.

(b) We may award grants to tribes for developing and implementing plans for investing Indian tribal trust funds.

(c) Tribes may also obtain technical assistance on their own.

§ 1200.41 What types of technical assistance are available?

The types of technical assistance include: investment planning; accounting; selection of investment managers; monitoring of investments; asset management; or other assistance appropriate to support funds withdrawal.

§ 1200.42 Who can provide technical assistance?

A sample of competent providers includes any of the following entities with the appropriate skills and capabilities: available DOI or OST staff; intertribal organizations; public agencies; and contracted private investment firms.

§ 1200.43 How can a tribe apply for technical assistance?

(a) Tribes wishing technical assistance may request it by sending us a letter along with a tribal resolution outlining the technical assistance required, tribal resources which may be applied to the need, and suggested provider, if known. The resolution must state clearly that the assistance is needed for developing, implementing, or managing an investment plan under the provisions of this authority.

(b) Tribes requesting funds for technical assistance must send a completed SF–424, APPLICATION FOR FEDERAL ASSISTANCE, and SF–424A, BUDGET INFORMATION, along with a tribal resolution, detailing the assistance specifically requested, and the suggested provider to our address in § 1200.13.

(c) We will make grants subject to funds availability. We will publish a notice in the FEDERAL REGISTER concerning the availability of funding, deadlines for grants, the application process, and approval criteria. If funding is limited, grants will be awarded based on criteria that we feel will best meet the intent of the Act. We will consult with tribes in determining annual criteria. Unsolicited grant requests will not be accepted.

§ 1200.44 What action will the Department take on requests for technical assistance?

We will respond in writing to all requests for technical assistance and grants, advising of decision, availability of appropriate expertise and funding, and anticipated delivery of the service.

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1986, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

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64 Removed 21161
67 Removed 21161
68 Removed 21161
71 Removed 21161
72 Removed 21161
74 Removed 21161
77 Removed 21161
115.10 Redesignated as 115.11; new 115.10 added 2874
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115.12 Redesignated as 115.13; new 115.12 redesignated from 115.11 2874
115.13 Redesignated as 115.14 and revised; new 115.13 redesignated from 115.12 2874
115.14 Redesignated as 115.13 and revised 2874
115.15 Added 2875
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274.6 Added 39524
277.5 Added 39524

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700.137 Revised; interim 19170
700.138 Revised; interim 19170

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720.151 Existing text designated as (a); (b) added 22892
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212 Removed 31937
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700.183 (a) revised; interim 21951

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20.4 Added 21994
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23.4 Existing text designated as (b); (a) added 21994
38 Revised 37678
61 Authority citation revised 11272
61.4 (f) and (g) added 11272
69 Removed 21996
102 Removed 44010
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2.7 Heading corrected 7666
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61 Authority citation revised 14193
61.4 (h) added 14193
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101.7 Amended 34975
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177 Removed 15136
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101.4 Amended 46471
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502 Heading revised 16494
503 Added 16495
515 Added 5815
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519 Added 5810
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522 Added 5810
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539 Added 5832
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550–558 Designated as Subchapter E; heading added 16493
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558 Added 5814
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36.3 Amended 61765
36.10 (a) revised 61765
36.11 (d) added 61765
36.20 (d)(1) through (4) added 61765
36.24 (g) added 61765

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36.61 (a)(1) revised 61766
36.77 Added 61766
67 Added 3291
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200.12 Added 43419
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63 Added 32274
63.15 OMB number pending 32274
63.33 OMB number pending 32274
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65 Removed 27780
66 Removed 27780
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151.12 Existing text designated as (a); (b) added 18083
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