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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]