PART II

# FEDERAL REGISTER

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## TITLE 25—INDIANS

### Chapter I—Bureau of Indian Affairs, Department of the Interior

REPUBLICATION OF REGULATIONS

Chapter I of Title 25 is republished to read as set forth below. Since its original codification, there have been numerous amendments and additions to the chapter. To facilitate the use of this material, the various amendments and additions are brought together in their entirety and the chapter has been arranged on a functional rather than alphabetical basis.

The numbers of the parts in this chapter have been adjusted to conform with its revised arrangement. The effective date of these numbers shall be the date of this republication. Existing delegations of authority, forms and other legal or administrative documents which refer to former part numbers of Chapter I are continued in effect and shall be construed to refer to the new part numbers until modified or revoked. A listing of the respective new and former part numbers is set forth below.

It is the intent of the Department in preparing this republication to make no substantive changes in the regulations and this republication is approved accordingly.

FRED A. SEATON,
*Secretary of the Interior.*

DECEMBER 6, 1957.

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Subchapter A—Procedures; Practice

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(R. S. 161; 5 U. S. C. 22)

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AUTHORITY: §§ 11.1 to 11.306 issued under R. S. 463; 25 U. S. C. 2. Interpret or apply sec. 1, 38 Stat. 586; 25 U. S. C. 200.

NOTE: The regulations in this part are applicable on Indian reservations subject to the provisions of § 11.1, and the following exceptions:

§§ 11.6, 11.7, 11.20, 11.22, 11.24, 11.26, 11.28, 11.29, 11.31, 11.32, 11.34, 11.36, 11.50, 11.63, and 11.64, not applicable to Crow Indians.

§§ 11.6C, 11.7C, 11.20C, 11.22C, 11.24C, 11.26C, 11.29C, 11.31C, 11.32C, 11.34C, 11.36C, 11.50C, 11.60C, 11.63C, 11.64C, and 11.75C, applicable only to Crow Indians.

§§ 11.76NH to 11.87NH, inclusive, applicable only to Navajo and Hopi Indians.

§§ 11.1, 11.2, 11.3, 11.5, 11.6, 11.6C, 11.7, 11.7C, 11.8, 11.9, 11.20C, 11.22, 11.22C, 11.24, 11.24C, 11.25, 11.26C, 11.28, 11.29, 11.29C, 11.30, 11.31, 11.31C, 11.32, 11.32C, 11.33, 11.34C, 11.36C, 11.37, 11.49, 11.50C, 11.52, 11.53, 11.57, 11.58, 11.60C 11.63, 11.63C, 11.64C, 11.74, 11.75C, and 11.76NH–11.87NH, inclusive, are not applicable to Coeur d'Alene Indians.

All sections which follow bearing the symbol "CA" at the end of the number are applicable only to the Coeur d'Alene Indians.

All sections in Part 11 not heretofore mentioned in this note are applicable to the Coeur d'Alene Indians.

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tions 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.

§ 102.3 *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.

CROSS REFERENCES: For individual Indian money regulations, see Part 104 of this chapter. For deposits of Indian funds in banks, see Part 105 of this chapter.

§ 102.4 *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.

§ 102.5 *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.

§ 102.6 *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 aprpoval of wills, see Part 15 and §§ 11.30–11.32C of this chapter.

§ 102.7 *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 104 of this chapter.

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AUTHORITY: §§ 104.1 to 104.12 issued under R. S. 161; 5 U. S. C. 22.

§ 104.1 *Definitions.* Whenever used in this part the terms defined in this section shall have the meaning stated:

(a) "Commissioner" means the Commissioner of Indian Affairs.

(b) "Area Director" means the officer in charge of an area office for the Bureau of Indian Affairs.

(c) "Superintendent" means the superintendent or other officer in charge of an Indian reservation, agency or establishment.

(d) "Minor" means an individual who has not reached his majority as defined by the laws of the state of his domicile.

(e) "Indian Money Accounts" are those accounts under the control of superintendents or disbursing agents containing funds, regardless of derivation, belonging to individuals.

§ 104.2 *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 222 of this subchapter.

§ 104.3 *Individual accounts.* Individuals shall have the right to withdraw funds in their Indian money accounts and upon their request the superintendent shall disburse the funds to them at such convenient times and places as the superintendent may designate, except as otherwise provided in this part.

§ 104.4 *Minors.* Funds of a minor may be disbursed for the minor's support, health, education, or welfare to parents, state-appointed guardians, fiduciaries, or to persons having the control and custody of the minor under plans approved by the superintendent, or directly to the minor upon such conditions as the superintendent may prescribe, in such amounts as he may deem necessary in the best interests of the minor. Superintendents are authorized to require modification of an approved plan whenever deemed in the best interest of the minor.

§ 104.5 *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 in the discretion of the superintendent, or the funds may be disbursed to a state-appointed guardian or curator under such conditions as the superintendent may prescribe.

§ 104.6 *Voluntary deposits.* Voluntary deposits shall not be accepted, but Indians who require banking service shall be encouraged to utilize commercial facilities. If in any case it is the judgment of the superintendent that an exception to this prohibition should be made to avoid a substantial hardship, he

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shall submit the facts in the case to the Area Director who is authorized to allow or deny an exception.

§ 104.7 *Payments by other Federal agencies.* Superintendents are authorized to accept and administer moneys that may be 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), for the benefit of adult Indians under legal disability or minors for whom no legal guardian or fiduciary has been appointed.

§ 104.8 *Purchase orders.* Purchase orders shall not be issued except upon the request of the individual and only to meet emergencies.

§ 104.9 *Restrictions.* Funds obligated under assignments made pursuant to a delegation of authority shall be disbursed only in accordance with the terms thereof. Funds derived from the sale of capital assets which by agreement approved prior to such sale by the Commissioner or his authorized representative are to be expended for specific purposes, and funds obligated under contractual arrangements approved in advance by the superintendent 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.

§ 104.10 *Funds of deceased Indians.* Funds of a deceased Indian may be disbursed (a) for support of dependent members of the families of decedent in such amounts deemed necessary to avoid hardship and consistent with the value of the estate and the interest of probable heirs; (b) for the payment of obligations previously authorized; (c) for the last illness and funeral expenses of the decedent; and (d) for probate fees and claims allowed pursuant to Parts 15 and 16 of this chapter.

§ 104.11 *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 superintendent 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, and costs of determining heirs to restricted property by the state courts.

§ 104.12 *Supervision; appeal.* Exercise of authority by superintendents under this part shall be subject to the supervision and control of the Commissioner and his designated representatives. Appeal from an action taken by the superintendent may be taken within 30 days to the Area Director and thence to the Commissioner within a like period.

## PART 105—DEPOSIT OF INDIAN FUNDS IN BANKS

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AUTHORITY: §§ 105.1 to 105.17 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply sec. 1, 36 Stat. 855, as amended; 25 U. S. C. 372.

§ 105.1 *Authority for deposit.* Indian moneys, individual or tribal, may be deposited in banks under authority of the acts of June 25, 1910, as amended (48 Stat. 648; 25 U. S. C. 372); May 25, 1918 (40 Stat. 591; 25 U. S. C. 162); and February 27, 1925 (43 Stat. 1009).

§ 105.2 *Banks defined.* For the purpose of the regulations in this part, the word "banks" shall include State and national banks, and savings banks and trust companies doing a banking business.

§ 105.3 *Application.* Any bank desiring to qualify for deposits of Indian funds shall transmit to the Commissioner of Indian Affairs (or to the proper superintendent if a call for bids has been issued) an application accompanied by a report in the form prescribed by the Comptroller of the Currency (or the State Banking Department) showing fully the condition of the bank on a day not more than one month prior to the date of such application. In making application, banks must state the maximum amount desired and the minimum that will be accepted, the rate of interest that will be paid, and the type of security that will be furnished. The following statement must be incorporated in the letter of application: This bank agrees that if designated a depositary, it will comply with the regulations of the Department of the Interior governing the deposit of Indian funds in banks and with such instructions as may from time to time be issued by the Commissioner of Indian Affairs.

§ 105.4 *Qualification.* (a) In the selection of a bank to serve as a depositary, the following points will be given consideration:

(1) Location with respect to the nearest agency.

(2) Financial condition.

(3) Rate of interest and security offered.

(b) No bank will be considered for designation unless it has been in successful operation for 1 year and has accumulated a surplus equal to 10 percent of the capital stock. This will not apply to banks offering United States bonds or notes as security.

§ 105.5 *Security.* Under acts of Congress, deposits of Indian funds are required to be secured by surety bonds (corporate or individual) or by bonds or notes of the United States. The following securities are classed as United States obligations: Panama Canal loan bonds, Treasury bonds, and Treasury notes. Bonds on which surety companies or individuals appear as sureties must be executed in triplicate on forms[1] prescribed for the purpose, and each copy must be accompanied by a transcript of a resolution by the board of directors of the bank, authorizing the proper officers to execute the instrument. The bonds must be executed for a stipulated term of not less than 180 days. Such bonds, however, are continuing in nature and will remain in force beyond the stipulated period until canceled in accordance with the provisions contained therein. Whenever a bank receives notice from any source that its surety bond is to be canceled, it shall immediately arrange to submit substitute security which must reach the Bureau of Indian Affairs and be approved 10 days before the effective date of the cancellation notice. Any bank failing to furnish other security in accordance with the foregoing shall relinquish its deposit with accrued interest not later than the date of the tenth day preceding the effective date of the cancellation notice.

§ 105.6 *Corporate sureties.* Only those companies holding certificates of authority from the Secretary of the Treasury to write bonds on which the United States is obligee are acceptable as sureties.

§ 105.7 *Individual sureties.* Each person appearing as surety on a personal surety bond must qualify in an amount equal to twice the penalty of the bond. At least four individuals must act as sureties on each bond. Officers and directors of a bank furnishing a personal surety bond will not be accepted as sureties, nor will any person who is a bonded officer of the United States or a married woman.

§ 105.8 *Collateral security.* Banks pledging United States bonds or notes as security shall execute a deposit agreement on forms prescribed by the Commissioner of Indian Affairs and shall furnish a resolution of authority by the board of directors, authorizing the sale, assignment, or transfer of the collateral. The bonds or notes shall be either deposited with the Commissioner of Indian Affairs who will place them with the Treasurer of the United States for safekeeping, or sent direct to the Division of Securities, Office of the United States Treasurer, Treasury Department, to be held subject to the order of the Commissioner of Indian Affairs. In either case, receipt for the collateral will issue from the Bureau of Indian Affairs. Registered bonds must be assigned in blank before shipment, and a resolution by board of directors, authorizing the assignment, must be filed with the Division of Loans and Currency, Treasury Department, on Treasury Department Form PD 1009 or Form PD 1010. All correspondence relating to the deposit, withdrawal, substitution, or exchange of securities shall be addressed to the Commissioner of Indian Affairs.

[1] Forms may be obtained from the Commissioner of Indian Affairs, Washington 25, D. C.



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