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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.

The following table lists the former part numbers and headings and indicates their position in reorganized Chapter I:

Former Part No.	Former Part No.	New Part No.	New Part No.
2	42	90	128
3	43	132	203
11	44	254	202
14	49	71	221
15	52	72	232
18	54	73	233
21	55	91	231
23	56	92	232
28	61	93	233
41	62	31	211
	63		214
	64		215
	71		212
	72		213
	73		216
	81		129
	82		128
	83		11
	88		170
	91		191
	94		193
	95		192
	97		194
	100		195
	103		196
	106		197
	110		198
	121		199
	124		200
	127		201
			202
			203
			204
			205
			206
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			236
			237
			238
			239
			240
			241
			242
			243
			244
			245
			246
			247
			248
			249
			250
			251
			252
			253
			254

10513

RULES AND REGULATIONS

Former Part No.	New Part No.	SUBCHAPTERS F—H—TRIBAL GOVERNMENT AND ENTERPRISES	Part
204		Leasing of Osage Reservation lands, Oklahoma, for mining, except oil and gas.	126
221	175	Indian money accounts.	127
222	104	Deposit and expenditure of individual funds of members of the Osage Tribe of Indians who do not have certificates of competency.	128
223	108	Judgment and payments in lieu of allotment funds.	129
224	109	Annuity and other per capita payments.	
227	101	Creation of trusts for restricted property of Indians, Five Civilized Tribes, Oklahoma.	
230	107	Deposit of Indian funds in banks.	
233	105	Regulations for pro rata shares of tribal funds.	
241	102	Issuance of patents in fee, certificates of competency, sale of certain Indian lands, and reinvestment of proceeds.	
242	121	Osage roll, certificates of competency, and Osage lands:	
		Subpart A.	123
		Subpart B.	127
243	122	Determination of competency; Crow Indians.	
262	21	Arrangement with States, Territories, or other agencies for relief of distress and social welfare of Indians.	
256	161	Rights-of-way over Indian lands.	
261	162	Roads of the Bureau of Indian Affairs.	
276	251	Licensed Indian traders.	
227	252	Traders on Navajo, Zuni, and Hopi Reservations.	
281	163	Establishment of roadless and wild areas on Indian reservations.	
291	89	Commercial fishing on Red Lake Indian Reservation.	
296	3	List of forms.	
		SUBCHAPTER A—PROCEDURES; PRACTICE	
		SUBCHAPTER A—PROCEDURES; PRACTICE	
Part			
1		Rules of the Bureau of Indian Affairs. [Reserved.]	
2		Appeals. [Reserved.]	
3		List of forms.	
		SUBCHAPTERS B—E—FEDERAL SERVICES; INDIVIDUAL INDIANS	
		SUBCHAPTER B—LAW AND ORDER	
11		Law and order on Indian reservations.	
		SUBCHAPTER C—PROBATE	
15		Determination of heirs and approval of wills, except as to members of the Five Civilized Tribes and Osage Indians.	
16		Determination of heirs and probate of the estate of deceased Indians of the Five Civilized Tribes.	
17		Actions on wills of Osage Indians.	
		SUBCHAPTER D—SOCIAL WELFARE	
21		Arrangement with States, Territories or other agencies for relief of distress and social welfare of Indians.	
22		Care of Indian children in contract schools.	
		SUBCHAPTER E—EDUCATION	
31		Federal schools for Indians.	
32		Administration of educational loans, grants and other assistance for higher education.	
33		Enrollment of Indians in public schools.	
34		Administration of a program of vocational training for adult Indians.	
		SUBCHAPTER F—ENROLLMENT	
Part			
41		Membership and enrollment of Indians. [Reserved.]	
42		Enrollment appeals.	
43		Enrollment of Indians of the Cabazon, Augustine and Torres-Martinez Bands of Mission Indians in California.	
44		Preparation of rolls for the distribution of the funds awarded certain Indian tribes or bands of Oregon.	
		SUBCHAPTER G—TRIBAL GOVERNMENT	
51		Indian organizations exclusive of the Indian Reorganization Act. [Reserved.]	
52		Tribes organized under sec. 16 of the Indian Reorganization Act. [Reserved.]	
53		Alaskan native groups organized under sec. 16 of the Indian Reorganization Act, and the Alaskan Act, as amended. [Reserved.]	
54		Tribes organized under the Oklahoma Indian Welfare Act. [Reserved.]	
71		Recognition of attorneys and agents to represent claimants.	
72		Attorney contracts with Indian tribes.	
73		Regulations governing the election of officers of the Osage Tribe.	
		SUBCHAPTER H—ECONOMIC ENTERPRISES	
81		Indian business corporations under sec. 17 of the Indian Reorganization Act. [Reserved.]	
82		Alaskan native business corporations organized under sec. 17 of the Indian Reorganization Act or the Alaska Act. [Reserved.]	
83		Indian Business Corporations under the Oklahoma Indian Welfare Act. [Reserved.]	
89		Commercial fishing on Red Lake Indian Reservations.	
90		Reindeer in Alaska.	
		SUBCHAPTER I—CREDIT ACTIVITIES	
		SUBCHAPTER I—CREDIT ACTIVITIES	
91		General credit to Indians.	
92		Revolving cattle pool.	
93		Klamath tribal loan fund.	
		SUBCHAPTER J—FISCAL AND FINANCIAL AFFAIRS	
		SUBCHAPTER J—FISCAL AND FINANCIAL AFFAIRS	
101		Annuity and other per capita payments.	
102		Regulations for pro rata shares of tribal funds.	
104		Indian money accounts.	
105		Deposit of Indian funds in banks.	
107		Creation of trusts for restricted property of Indians, Five Civilized Tribes, Oklahoma.	
108		Deposit and expenditure of individual funds of members of the Osage Tribe of Indians who do not have Certificates of Competency.	
109		Judgment funds, Shoshone Tribe of the Wind River Reservation, Wyoming.	
111		Service charges against Indians. [Reserved.]	
		SUBCHAPTERS K—O—LANDS; SURFACE ESTATES AND RESOURCES	
		SUBCHAPTER K—PATENTS, ALLOTMENTS AND SALES	
121		Issuance of Patents in Fee, Certificates of Competency, sale of certain Indian lands, and reinvestment of proceeds.	
122		Determination of competency: Crow Indians.	
123		Osage Roll, Certificates of Competency.	
125		Reallotment of lands to unallotted Indian children.	
		SUBCHAPTER L—LEASING AND PERMITTING	
131		Leasing and permitting.	
132		Preservation of antiquities.	
		SUBCHAPTER M—FORESTRY	
141		General forest regulations.	
142		Sale of lumber and other forest products produced by Indian enterprises from the forests on Indian reservations.	
143		Sale of timber products and use of forest lands for nonforest purposes, Menominee Indian Reservation.	
144		Sale of forest products, Red Lake Indian Reservation, Minn.	
		SUBCHAPTER N—GRAZING	
151		General grazing regulations.	
152		Navajo grazing regulations.	
153		Grazing, Pine Ridge Aerial Gunnery Range.	
		SUBCHAPTER O—RIGHTS-OF-WAY—ROADS	
161		Rights-of-way over Indian lands.	
162		Roads of the Bureau of Indian Affairs.	
163		Establishment of roadless and wild areas on Indian Reservations.	
		SUBCHAPTERS P—Q—LANDS; SUBSURFACE ESTATES AND RESOURCES	
		SUBCHAPTER P—MINING	
171		Leasing of tribal lands for mining.	
172		Leasing of allotted lands for mining.	
173		Leasing of lands in Crow Indian Reservation, Mont., for mining.	
174		Leasing of restricted lands of members of Five Civilized Tribes, Oklahoma for mining.	
175		Leasing of Osage Reservation lands, Oklahoma, for mining, except oil and gas.	
176		Lead and zinc mining operations and leases, Quapaw Agency.	
		SUBCHAPTER Q—OIL AND GAS	
181		Oil and gas leases and operations on tribal lands. [Reserved.]	
182		Oil and gas leases and operations on allotted lands. [Reserved.]	
183		Leasing of Osage Reservation lands for oil and gas mining.	
184		Leasing of certain lands in Wind River Indian Reservation, Wyoming, for oil and gas mining.	
		SUBCHAPTERS R—U—WATER AND POWER RESOURCES	
		SUBCHAPTER R—IRRIGATION PROJECTS	
191		Blackfeet irrigation project, Montana.	
192		Colville irrigation project, Washington.	
193		Crow irrigation project, Montana.	
194		Flathead irrigation project, Montana.	
195		Flathead, Mission, and Jocko Valley Irrigation districts, Montana.	
196		Fort Belknap irrigation project, Montana.	
197		Fort Hall irrigation project, Idaho.	
198		Fort Peck Indian irrigation project, Montana.	
199		Utah irrigation project, Utah.	
200		Wapato irrigation project, Washington.	
201		Wind River irrigation project, Wyoming.	
202		Pueblo Indian lands benefited by irrigation and drainage works of Middle Rio Grande Conservancy District, New Mexico.	

Part 203 Concessions, permits and leases on lands withdrawn or acquired in connection with Indian irrigation projects.

SUBCHAPTER 5—CONSTRUCTION

211 Partial payment construction charges on Indian irrigation projects.

212 Construction assessments, Crow Indian irrigation project.

213 Fort Hall Indian irrigation project, Idaho.

214 Reimbursement of construction costs, Lummi Indian diking project, Washington.

215 Irrigation project, Arizona.

216 Reimbursement of construction costs, Ahtanum Unit, Wapato Indian irrigation project, Washington.

SUBCHAPTER 7—OPERATION AND MAINTENANCE

221 Operation and maintenance charges.

SUBCHAPTER 9—ELECTRIC POWER SYSTEM

231 Colorado River irrigation project, Arizona.

232 Flathead Indian irrigation project, Montana.

233 San Carlos irrigation project, Arizona.

SUBCHAPTER V [RESERVED]

SUBCHAPTER W—MISCELLANEOUS ACTIVITIES

SUBCHAPTER W—MISCELLANEOUS ACTIVITIES

251 Licensed Indian traders.

252 Traders on Navajo, Zuni and Hopi Reservations.

253 Commitment to St. Elizabeths Hospital.

254 Operation of the U. S. M. S. "North Star" (between Seattle, Wash., and stations of the Bureau of Indian Affairs and other Government agencies, Alaska).

APPENDIX—EXTENSION OF THE TRUST OR RESTRICTED STATUS OF CERTAIN INDIAN LANDS

Subchapter A—Procedures; Practice

Subchapter A—Procedures; Practice

PART 1—RULES OF THE BUREAU OF INDIAN AFFAIRS [RESERVED]

PART 2—APPEALS [RESERVED]

PART 3—LIST OF FORMS

§ 3.1 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 25, D. C., and at the office of any Area Director or Agency Superintendent.

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

Subchapters B—E—Federal Services; Individual Indians

Subchapter B—Law and Order

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

APPLICATION; JURISDICTION

Sec. 11.1 Application of regulations.

11.2 Jurisdiction.

COURTS OF INDIAN OFFENSES

11.2CA Jurisdiction.

11.3 Judges.

11.3CA Judges.

11.4 Removal of judges.

11.5 Court procedure.

11.5CA Court proceedings.

11.6 Appellate proceedings.

11.6C Appellate proceedings.

11.6CA Appellate proceedings.

Sec. 11.7

11.7C

11.8

11.8CA

11.9

11.9CA

11.10

11.11

11.12

11.13

11.14

11.15

11.16

11.17

11.18

11.19

11.20

11.20C

11.21

11.22

11.22C

11.22CA

11.23

11.24

11.24C

11.24CA

11.25

11.25CA

11.26

11.26C

11.27

11.28

11.28CA

11.29

11.29C

11.30

11.30CA

11.31

11.31C

11.31CA

11.32

11.32C

11.33

11.33CA

11.34

11.34C

11.35

11.36

11.36C

11.37

11.37CA

11.38

11.39

11.40

11.41

11.42

11.43

11.44

11.45

11.46

11.47

11.48

11.49

11.49CA

11.50

11.50C

11.51

11.52

11.52CA

11.53

11.53CA

11.54

11.55

11.56

11.57

Juries.

Juries.

Witnesses.

Witnesses.

Professional attorneys.

Professional attorneys.

Clerks.

Records.

Copies of laws.

Complaints.

Warrants to apprehend.

Arrests.

Search warrants.

Commitments.

Ball or bond.

Definition of signature.

Definition of tribal council.

Definition of tribal council.

Cooperation by Federal employees.

CIVIL ACTIONS

Jurisdiction.

Jurisdiction.

Jurisdiction.

Law applicable in civil actions.

Judgments in civil actions.

Judgments in civil actions.

Judgments in civil actions.

Costs in civil actions.

Costs in civil actions.

Payment of judgments from individual Indian moneys.

Payment of judgments from individual Indian moneys.

DOMESTIC RELATIONS

Recording of marriages and divorces.

Tribal custom marriage and divorce.

Marriages, divorces, and adoptions.

Tribal custom adoption.

Adoption.

Determination of paternity and support.

Determination of paternity and support.

Determination of heirs.

Determination of heirs.

Determination of heirs.

Approval of wills.

Approval of wills.

SENTENCES

Nature of sentences.

Nature of sentences.

Probation.

Probation.

Parole.

Juvenile delinquency.

Juvenile delinquency.

Disposition of fines.

Deposit and disposition of fines.

CODE OF INDIAN TRIBAL OFFENSES

Assault.

Assault and battery.

Carrying concealed weapons.

Abduction.

Theft.

Embezzlement.

Fraud.

Forgery.

Misbranding.

Receiving stolen property.

Extortion.

Disorderly conduct.

Disorderly conduct.

Reckless driving.

Reckless driving.

Malicious mischief.

Trespass.

Trespass.

Trespass.

Injury to public property.

Injury to public property.

Maintaining a public nuisance.

Liquor violations.

Cruelty to animals.

Game violations.

Sec. 11.58

11.59

11.60C

11.61

11.62

11.63

11.63C

11.63CA

11.64

11.64C

11.65

11.66

11.67

11.68

11.69

11.70

11.71

11.72

11.73

11.74

11.75C

11.75CA

11.76CA

11.76NE

11.77NE

11.78NE

11.79NE

11.80NE

11.81NE

11.82NE

11.83NE

11.84NE

11.85NE

11.86NE

11.87NE

THE INDIAN POLICE

11.301 Superintendent in command.

11.302 Police commissioners.

11.303 Police training.

11.304 Indian policemen.

11.305 Dismissal.

11.306 Return of equipment.

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.

§§ 11.76NE to 11.87NE, 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, 11.63C, 11.63C, 11.64C, 11.74, 11.75C, and 11.76NE—11.87NE, 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.

(e) Allowance of not to exceed \$100 per month for 12 months to a widow who is entitled to participate in the distribution of the estate and who does not have sufficient funds of her own.

(f) Allowance of not to exceed \$35 per 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.

§ 108.29 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.

§ 108.30 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.

§ 108.31 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.

§ 108.32 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.

§ 108.33 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.

§ 108.34 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.

§ 108.35 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 109—JUDGMENT AND PAYMENTS IN LIEU OF ALLOTMENT FUNDS

- 109.1 Program required; purposes for which expenditures may be made.
- 109.2 Family programs.
- 109.3 Scope of programs.
- 109.4 Authority to withhold funds.
- 109.5 Approval of programs.
- 109.6 Right of appeal.
- 109.7 Individual land purchases.
- 109.8 Issuance of purchase orders.
- 109.9 Purchase of real property.
- 109.10 Trust status of property.
- 109.11 Allowances for support.
- 109.12 Medical treatment.
- 109.13 Education.
- 109.14 Transfer of funds.
- 109.15 Repayment of loans.

- Sec.
- 109.16 Funds not available for payment of certain debts.
- 109.17 Disposition of funds in event of death.
- 109.18 Fee patent Indians.
- 109.19 Non-resident Indians.
- 109.20 Definition of "adult" and "minor."

AUTHORITY: §§ 109.1 to 109.20 issued under sec. 2, 53 Stat. 1128; 25 U. S. C. 572.

NOTE: For declaration of policy in disbursement of the judgment fund of the Shoshone Tribe of the Wind River Reservation, Wyo., see 4 F. R. 4797, Dec. 8, 1939.

§ 109.1 Program required; purposes for which expenditures may be made. Pro-rata shares of the Shoshone Judgment Fund shall be expended in accordance with an approved program and for: Purchase of land; improvement of land to be acquired or already held by the Indian; erection and improvement of suitable homes; education; purchase of building material, farming equipment, livestock, feed, food, seed, grain, tools, machinery, implements, household goods, bedding, clothing, and any other equipment, supplies, or training necessary to enable the Indian to fit himself for or to engage in farming, livestock raising, industry, or such other pursuits or vocations as will enable him to become self-supporting.

§ 109.2 Family programs. The funds of a husband and wife, and of any other adults in a family group, may be used in the execution of a family program: *Provided*, The written consent of each individual is filed with the superintendent of the Wind River Indian Agency, Wyoming, hereafter in this subpart referred to as the superintendent. The available funds of a minor may be used in the execution of such family program, only on condition that (a) the funds of such minor are used solely in the development, repair or maintenance of real or personal property owned by said minor or held in trust for him, or in the creation, development, or completion of a project or undertaking or in the production of a gain or profit which will inure directly to the benefit of such minor, (b) title to any real property or fixtures, purchased wholly or in part with his money shall, except with the approval of the Commissioner of Indian Affairs, be held in trust for him, or (c) the adults convey to the United States in trust for such minor sufficient real or personal property to assure, insofar as is possible, that the minor upon attaining majority will have, in lieu of the money, property of a value equal to that of his funds used in the execution of the program. The superintendent shall not approve a family program which involves the transfer to a minor, in exchange for his funds, of assets of a nature which will not be useful to him. The written consent of a minor who is 16 years of age or over, duly witnessed by at least two disinterested persons, shall accompany any family program which involves the use of said minor's funds.

§ 109.3 Scope of programs. Programs shall contemplate the eventual use of the entire pro-rata share or defi-

nately provide for the conservation of a portion of such share, but in no case, except as hereinafter provided in this part, shall a program provide for the expenditure in the first year, after its approval, of more than \$1,350 for each adult or more than \$500 for each minor contributing to the program, and the program shall recognize that future use and expenditures for such program after the first year shall depend upon the proper use of the funds initially authorized to be expended: *Provided*, That the program of an adult may, with the approval of the Commissioner of Indian Affairs, provide for the expenditure in the first year after its approval of more than \$1,350 when required for its most effective development. Expenditures of a minor's funds under this subpart shall not exceed a total sum of \$500 and the remaining \$1,850 of each minor's share shall be held intact until his majority, as required in section 2 of the act of July 27, 1939 (53 Stat. 1128).

§ 109.4 *Authority to withhold funds.* The superintendent may stop disbursement of funds in the execution of an approved program upon evidence that the Indian is not complying with the program or that the continuation of the program or expenditures thereunder will not result in benefit to the Indian, and he may require either further justification for carrying out the program theretofore approved or the submission of a new program.

§ 109.5 *Approval of programs.* The superintendent, subject to the limitations described in this subpart, shall approve or disapprove all programs submitted by Indians for the use and disbursement of pro rata shares of the Shoshone Judgment Fund. The Shoshone business council may act, or designate a committee of Indians to act, in an advisory capacity in the preparation and consideration of programs. Programs shall be prepared upon an approved form,¹ which shall be filled out in duplicate, one copy to be filed at the Wind River Indian Agency and one copy to be retained in the possession of the Indian.

§ 109.6 *Right of appeal.* Indians shall have the right of appeal, through the superintendent, to the Area Director, Billings Area Office, Bureau of Indian Affairs (referred to in this part as the Area Director) (a) from an action of the superintendent in withholding funds under § 109.4 and (b) from an action of the superintendent in disapproving a program under § 109.5. Appeals must be filed within 60 days with the superintendent who shall promptly forward the appeal, together with a statement of the facts in the case and of his reasons for the action taken by him, to the Area Director. An appeal will lie within a like period from the action of the Area Director to the Commissioner of Indian Affairs.

§ 109.7 *Individual land purchases.* Before approving a program which includes an individual land purchase, the superintendent shall determine that such

purchase will not conflict with the tribal land program of land purchase, consolidations and use authorized by the act of July 27, 1939 (53 Stat. 1128). No purchase of land by individuals using restricted funds shall be made within the ceded or opened portion of the Wind River Reservation.

§ 109.8 *Issuance of purchase orders.* In the discretion of the superintendent, expenditures from pro rata share accounts, other than for the purchase of real property, may be made either by purchase order or by cash disbursement to the individual for the execution of an approved program.

§ 109.9 *Purchase of real property.* Except as otherwise provided in § 109.18 payment for the purchase of real property shall be made by the superintendent, and such payment shall be made only after the title has been found satisfactory by the Area Director.

§ 109.10 *Trust status of property.* Title to all real property to be acquired with restricted funds, when such property is situated within the diminished portion of the Wind River Reservation, shall be taken in trust for the individual. Title to personal property acquired pursuant to a purchase order shall be taken in trust. Livestock purchased and the offspring thereof shall be marked or branded with the individual brand of the owner. The provisions of this section are subject to the provisions of § 109.18.

§ 109.11 *Allowances for support.* The superintendent may, upon proper showing, approve expenditures for the maintenance and support of the aged, infirm, decrepit, and incapacitated, whether adults or minors, and expenditures from that part of an adult's pro rata share which exceeds \$1,450 for the support of an individual who has proved to be incapable of conducting a productive enterprise. The manner of disbursement and the amount of funds to be used for such purposes shall be determined by the superintendent, subject to the expenditure limitations set forth in § 109.3.

§ 109.12 *Medical treatment.* The superintendent may approve the expenditure from that part of an adult's pro rata share which exceeds \$1,450 to cover medical, dental, surgical, or hospital treatment, including nursing services. No part of a minor's pro rata share shall be expended for such purposes.

§ 109.13 *Education.* The superintendent may authorize the expenditure of funds from any minors account for clothing because of school needs, and in addition, from the account of any minor who is in the ninth grade or higher for his tuition and other necessary expense in a government, private, public, or mission school.

§ 109.14 *Transfer of funds.* When an Indian who is entitled to a pro-rata share of the Shoshone judgment fund is a resident within the jurisdiction of another Indian agency, the superintendent may transfer to the superintendent of such other agency, to the credit of such Indian, the share of the Shoshone judgment fund to which such Indian is en-

titled. All funds so transferred shall be expended in accordance with this subpart.

§ 109.15 *Repayment of loans.* Before approving a program, the superintendent shall make certain that provision has been made therein for the repayment of any amounts due on any loan, evidenced by a written agreement, from the United States or from the Shoshone Tribe.

§ 109.16 *Funds not available for payment of certain debts.* Debts, except those to the United States and the Shoshone Tribe, incurred by Indians prior to July 27, 1939, shall not be paid from any funds made available from the Shoshone Judgment Fund. Debts of Indians will not be paid from the funds to be disbursed under this subpart unless previously authorized by the superintendent, except in emergency cases necessitating medical treatment or in the payment of last illness or funeral expenses,² as authorized in this subpart, and any other exceptional cases where specific authority is granted by the Commissioner of Indian Affairs.

§ 109.17 *Disposition of funds in event of death.* Prior to the determination of heirs, the superintendent may disburse whatever amount he deems necessary and proper for the support of the widow of the decedent and for each minor child of the decedent. Before making the disbursement, the superintendent shall be reasonably satisfied that actual need for assistance exists and that the value of the estate is sufficient to justify such payments considering all proper claims. A complete record of all disbursements shall be reported by the superintendent to the examiner of inheritance and by the latter considered and included in his report of probate proceedings. After payment of all proper claims against the funds, including reimbursable or other debts due the United States or the Shoshone Tribe and excluding any claims arising out of debts incurred prior to July 27, 1939, the balance shall be transferred to the individual accounts of the heirs of the decedent in accordance with the approved heirship findings. Expenditures from inherited funds shall be made for purposes authorized in this part.

§ 109.18 *Fee patent Indians.* For the purposes of this part, a "fee patent Indian" shall be an adult Indian who has received a patent in fee to his allotment. Fee patent Indians shall be required to submit a program, the approval of which shall be in conformity with §§ 109.1 through 109.6. Fee patent Indians shall not be required to make purchases through purchase orders, but shall have funds disbursed to them direct by the superintendent for such purchases. Funds of minor children of fee patent Indians may be included in an approved family program, but their expenditure shall be subject to the same provisions as cover the expenditure of the funds of minor children of Indians other than fee patent Indians. Fee patent Indians shall

¹ Forms shall be made available at the Wind River Indian Agency.

² Comptroller General Ruling A-62264, dated July 25, 1935.

be required to conform to the provisions of § 109.9 only when the purchase of real property involves property situated within the diminished portion of the Wind River Reservation. Payments by fee patent Indians for real property outside the diminished portion of the Wind River Reservation may be made by them with funds disbursed to them by the superintendent. Except as otherwise provided in this section, fee patent Indians shall conform to all the provisions of this part.

§ 109.19 *Non-resident Indians.* The provisions of § 109.18 pertaining to fee patent Indians shall also apply to Indians other than fee patent Indians who habitually reside away from the Wind River Reservation and have, to all intents and purposes, severed their affiliation with the tribe, and who shall furnish to the superintendent in writing a statement that they intend to continue to reside away from the reservation and evidence, satisfactory to the superintendent, of their competency and ability to support themselves and manage their own affairs.

§ 109.20 *Definition of "adult" and "minor."* The term "adult" shall include all members of the tribe 18 years of age or over, and the term "minor" shall include all members of the tribe less than 18 years of age.

PART 111—SERVICE CHARGES AGAINST INDIANS. [RESERVED]

Subchapters K—O—Lands; Surface Estates and Resources

Subchapter K—Patents, Allotments and Sales

PART 121—ISSUANCE OF PATENTS IN FEE, CERTIFICATES OF COMPETENCY, SALE OF CERTAIN INDIAN LANDS, AND REINVESTMENT OF PROCEEDS

PATENTS IN FEE

- Sec. 121.1 Application for patent in fee.
- 121.2 Issuance of patents in fee.

CERTIFICATES OF COMPETENCY

- 121.3 Applications for certificates of competency.
- 121.4 Superintendent's report on certificates of competency.
- 121.5 Certificates of competency to certain Osage adults.
- 121.6 Applications for certificates of competency to Kaw or Kansas adults.
- 121.7 Issuance of certificates of competency.

PARTITIONS OF INHERITED ALLOTMENTS

- 121.8 Applications for partitions.

SALES AND EXCHANGES OF INDIVIDUALLY OWNED TRUST OR RESTRICTED LAND, EXCLUSIVE OF FIVE CIVILIZED TRIBES LAND

- 121.9 Sales and exchanges by Indians.
- 121.10 Sales by the Secretary.
- 121.13 Preference right to purchase lands in Oklahoma.
- 121.14 Selection of lands under preference right.
- 121.15 Waiver of preference right.
- 121.16 Reinvestment of proceeds in restricted nontaxable land.

METHOD OF SALES

- 121.17 Petitions for the sale of land.
- 121.21 Costs of conveyances; payment.
- 121.22 Additional sale fee required.
- 121.23 Irrigation fees; payment.

- Sec. 121.24 Appraisal, advertisement, consideration.
- 121.25 Bids; how made.
- 121.26 Number of bids.
- 121.27 Bidding not open to employees.
- 121.28 Bids; right to reject.
- 121.29 Bidders, right to be present when bids are opened.
- 121.30 Exchange submitted with bids; disposal.
- 121.31 Deferred payment sales.

REMOVAL OF RESTRICTIONS AND SALE OF LANDS, FIVE CIVILIZED TRIBES AND REINVESTMENT OF FUNDS IN NONTAXABLE LANDS

- 121.34 Removal of restrictions, application.
- 121.35 Removal of restrictions, unconditionally.
- 121.36 Removal of restrictions, conditionally.
- 121.37 Advertising lands for sale.
- 121.38 Bids; how made and accepted.
- 121.39 Fees and consideration for sale; acceptance and deposit.
- 121.40 Deferred payment sales; how made.
- 121.41 Cash payments; how accounted.
- 121.42 Deferred payments; how accounted.
- 121.43 Consummation of sale.
- 121.44 Reinvestment of funds in restricted nontaxable land.
- 121.45 Superintendent's certificate on deed.
- 121.46 Purchase of restricted, nontaxable personal property with restricted funds.
- 121.47 Identification USIS.
- 121.48 Alienation of property covered by bill of sale; invalid unless previously authorized.

REMOVAL OF RESTRICTIONS AGAINST ALIENATION, EXCLUSIVE OF FIVE CIVILIZED TRIBES LAND

- 121.49 Procedure for removing restrictions.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

- 121.52 Approval of mortgages and deeds of trust.

AUTHORITY: §§ 121.1 to 121.52 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply sec. 7, 32 Stat. 275, 34 Stat. 1018, sec. 1, 35 Stat. 444, sec. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 17, 40 Stat. 579, 62 Stat. 236; 25 U. S. C. 379, 405, 404, 372, 373, 483. Other statutory provisions interpreted or applied are cited to text in parentheses.

CROSS REFERENCES: For further regulations pertaining to the sale of irrigable lands, see Parts 129, 128 and § 211.4 of this chapter. For Indian money regulations, see Parts 104, 101, 107, 105, and 102 of this chapter. For regulations pertaining to the determination of heirs and approval of wills, see Part 15 and §§ 11.30-11.32C of this chapter.

PATENTS IN FEE

§ 121.1 *Application for patent in fee.* Any Indian 21 years of age or over may apply for a patent in fee for land, the title to which is held in trust for said Indian by the United States. The application shall be made on a form approved by the Commissioner of Indian Affairs and shall be completed and filed with the Superintendent or other officer in charge of the Indian agency or other local facility having administrative jurisdiction over the land.

§ 121.2 *Issuance of patents in fee.* (a) The Secretary of the Interior may, in his discretion, and pursuant to the acts of February 8, 1887, as amended (24 Stat. 388, as amended; 25 U. S. C. 349); June 25, 1910, as amended (36 Stat. 855, as amended; 25 U. S. C. 372); and May 14, 1948 (62 Stat. 236; 25 U. S. C. 483), and pursuant to other authorizing

acts, issue patents in fee to Indians applying therefor in accordance with § 121.1. A patent in fee will not be issued pursuant to this paragraph unless it appears that the applicant is competent and capable of managing his or her own affairs. Prior to the issuance of a patent in fee pursuant to this paragraph the land shall be appraised at its fair market value. If an application is denied, the applicant shall be so notified in writing.

(b) The Secretary will, pursuant to the act of March 1, 1907 (34 Stat. 1015, 1034), 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 being made by such Indian, and without regard to the applicant's competency and ability to manage his or her own affairs.

(c) Whenever the Secretary determines that land, or any interest therein, held in trust for an Indian by the United States, has been acquired through inheritance or devise by (1) a non-Indian or (2) an alien Indian or an Indian who has become an alien subsequent to the time of such acquisition, the Secretary may issue a patent in fee for the land or interest therein to such non-Indian or alien Indian, without regard to such person's competency and ability to manage his or her own affairs, and regardless of whether such person has applied for a patent in fee.

CERTIFICATES OF COMPETENCY

§ 121.3 *Applications for certificates of competency.* Applications on Form 5-105, modified for certificates of competency authorized by section 1 of the act of June 25, 1910 (36 Stat. 855, 48 Stat. 647; 25 U. S. C. 372), shall be filed with the Indian superintendent having jurisdiction over the land from which the allottee or heirs seek to have all restrictions removed. When the land is not located within the territorial limits of an Indian reservation the allottee or heirs may petition the most convenient superintendent or other officer in charge of an Indian agency or Indian tribe or, such other public officer of the United States as may be designated by the Secretary of the Interior, who shall take like action as if the lands were within the territorial limits of an Indian reservation.

§ 121.4 *Superintendent's report on certificates of competency.* Reports on application for certificates of competency should be on Form 5-110f and should be accompanied by the recommendation of the tribal council. The issuance of a certificate of competency is discretionary with the Secretary of the Interior. Such a certificate will not be issued unless it can be affirmatively shown that its issuance will not affect unfavorably the consolidation and use by the Indians of restricted Indian lands. The provisions of the act of June 25, 1910, apply only to Indians or their heirs to whom a patent in fee containing restrictions on alienation has been issued.

§ 121.5 *Certificates of competency to certain Osage adults.* Applications for certificates of competency by adult members of the Osage Tribe of one-half or