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PART I

HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

NATIONAL FARM-CITY WEEK, 1973—Presidential Proclamation	31407
COTTON AND WHEAT PRODUCTS—Tariff Commission hearings on proposed suspension of annual import quotas, 1-21 and 1-7-74 (2 documents).....	31482
RICE—USDA announces and apportions National acreage allotment and proclaims no marketing quota for 1974 crop	31409
SUGAR—USDA establishes 1974 requirements and area quotas and amends those for 1973 (2 documents); effective 11-9-73.....	31410, 31412
FRUIT JELLY AND PRESERVES—FDA proposes revision of identity standards; comments by 1-14-74.....	31450
BROADCAST TAPES—FCC proposes retention by Educational Stations; comments by 12-18-73	31456
CERTIFICATES OF BENEFICIAL OWNERSHIP—USDA proposes issuance and redemption procedures; comments by 11-29-73	31447
MEETINGS—	
State Department: Advisory Panel on Folk Music and Jazz, 11-28-73.....	31458
Advisory Panel on Music, 11-29-73.....	31458
Advisory Panel on Academic Music, 11-30-73	31458
Defense Department: Advisory Panel on ROTC Affairs, 12-11-73	31458
Navy Department, United States Naval Academy:	
Academic Advisory Board, 11-26-73	31458
Board of Visitors, 12-11 and 12-12-73.....	31458
Interior Department: Shoshone District Advisory Board, 12-18 and 12-19-73.....	31459
USDA: National Advisory Council on Child Nutrition, 11-27 and 11-28-73.....	31459
NIH: Assessment of Automated Blood Pressure Device Workshop, 11-28 and 11-29-73.....	31460
NASA: Research and Technology Advisory Council, 11-15 and 11-16-73.....	31472
CLC: Health Industry Wage and Salary Committee, held on 11-11-73.....	31467

PART II:

FEDERAL AID TO HIGHWAYS—DOT delegates authority to appropriate administrators; effective 11-14-73	31493
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Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rulemaking prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 60]

USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS

Proposed Rulemaking

Notice is hereby given that it is proposed to add a new Part 60 to Subchapter G, Chapter I, of Title 25 of the Code of Federal Regulations as set forth below. This addition is proposed pursuant to the authority contained in the Act of October 19, 1973 (Pub. L. 93-134).

The purpose of the proposed regulations is to govern the preparation of proposed plans for the use or distribution of judgment funds appropriated in satisfaction of awards made by the Indian Claims Commission and the United States Court of Claims.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations to the Division of Tribal Government Services, Bureau of Indian Affairs, Washington, D.C. 20245, on or before December 14, 1973.

It is proposed to add a new Part 60 to Subchapter G, Chapter I, of Title 25 of the Code of Federal Regulations to read as follows:

PART 60—USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS

Sec.	
60.1	Definitions.
60.2	Purpose.
60.3	Time limits.
60.4	Conduct of hearings of record.
60.5	Submittal of final proposed plan by Secretary.
60.6	Submittal of proposed legislation by Secretary.
60.7	Extension of period for submitting plans.
60.8	Enrollment aspects of plans.
60.9	Programing aspects of plans.
60.10	Per capita payment aspects of plans and protection of funds accruing to minors and legal incompetents.
60.11	Investment of judgment funds.
60.12	Insuring the proper performance of effective plans.

AUTHORITY: Act of October 19, 1973 (Pub. L. 93-134).

§ 60.1 Definitions.

As used in this Part 60, terms shall have the meanings set forth in this section.

(a) "Act" means the Act of October 19, 1973 (Pub. L. 93-134).

(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) "Associate Solicitor" means the Associate Solicitor of Indian Affairs of the Department of the Interior.

(e) "Area Director" means the Area Director of any one of the Area Offices of the Bureau of Indian Affairs.

(f) "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.

(g) "Congressional Committees" means the Committees on Interior and Insular Affairs of the Senate and House of Representatives of the United States. "Either House" means either of these committees.

(h) "Indian tribe or group" means any Indian tribe, nation, band, pueblo, community or identifiable group of Indians, or Alaska Native entity, which has an interest in an award made by the Indian Claims Commission or the United States Court of Claims.

(i) "Tribal governing body" means the governing body of a formally organized tribe or group, the governing body of a formally organized Alaska Native entity or tribe in Oklahoma, or the spokesmen or representatives, as recognized by the Secretary, of any descendant group.

(j) "Aggrieved historic tribe" means the Indian tribe or group which lost lands, other property, or funds which resulted in a judgment granted by the Indian Claims Commission or the United States Court of Claims.

(k) "Successor tribe" means a modern, formally organized, reservation-based tribe or group, a formally organized tribe in Oklahoma, or a formally organized Alaska Native entity, found by the Secretary to be representative of, either wholly or partly, an aggrieved historic tribe.

(l) "Descendant group" means an unorganized or informally organized non-reservation based entity, or a portion of an organized, reservation-based tribe, which is composed of individual lineal descendants of members of an aggrieved historic tribe, and is found by the Secretary to be wholly or partly representative of such historic tribe.

(m) "Plan" means the plan submitted by the Secretary, together with all per-

manent records and documents, for the use or distribution of judgment funds, to the Congressional Committees.

(n) "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 Oklahoma or Alaska Native entity or a roll of a descendant group; or which pertains to using an historical roll or record of names, including tribal rolls closed and made final, for research or other purposes.

(o) "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.

(p) "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.

(q) "Use or distribution" means any utilization or disposition of the judgment funds, including programing, per capita payments, or a combination thereof.

(r) "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.

(s) "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 (60th) 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 enabling legislation for the disposition of the judgment funds.

(t) "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 on the approved date.

(u) "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.

(v) "Attorney fees and litigation expenses" means all fees and expenses incurred in litigating and processing a claim to the granting of an award, including those allowed by the Indian Claims Commission or the United States Court of Claims and which are of record.

§ 60.2 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 and for which there has been no enabling legislation.

§ 60.3 Time limits.

The Secretary shall 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 by the Bureau of Indian Affairs. All pertinent data in the areas of cultural and political history and all pertinent rolls or records shall be considered. The results of such research shall specify a successor tribe (or tribes) to an aggrieved historic tribe, combinations of tribes and portions of tribes, a descendant group (or groups), or any combination of such entities found to be representative of an aggrieved historic tribe. 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 formula for the division or apportionment of the judgment funds among or between the involved entities.

Within seventy-five (75) days of the date of the appropriation of funds to satisfy a judgment, the Commissioner shall submit the results of all research to the involved Area Director (or Area Directors), who shall immediately provide the results of the research 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 suggested plan. The Area Director shall particularly consider any programing aspects based on the Congressional programing concept of a minimum of twenty (20) per centum of the judgment funds, including available interest and the results of investments made prior to the approval of the plan. Such meetings shall be held within twenty (20) days of the receipt of the results of the research by the

Area Director. When advised that a judgment is final the Superintendent shall begin to prepare, in cooperation with the tribal governing body, a report on the social and economic conditions of the affected tribe or group. Such report shall be made available to the Area Director, the Commissioner and the governing body of the tribe or group prior to meetings or discussions on any tribal suggested plan. Social and economic reports shall not ordinarily be prepared for descendant groups.

Within sixty (60) days after the Commissioner submits the results of the research to the Area Director, a hearing of record shall be called by the Area Director to receive testimony on the tribal plan. The hearing shall be held after meetings with the tribe and after preliminary review of the tribal proposed plan by the Commissioner.

§ 60.4 Conduct of hearings of record.

The Area Director shall hold a hearing of record, 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 proposed tribal plan.

The Area Director shall arrange for all testimony to be transcribed at the hearing and shall furnish the Commissioner and the tribal governing body with a copy of the transcript as soon as possible 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 to the Area Director by the date of the hearing.

Whenever two or more tribes or groups are involved in the proposed plan, including situations in which two or more Area Offices are concerned, every effort shall be made by the Area Director or Area Directors to hold a single hearing at a time and location as convenient to the 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 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.

§ 60.5 Submittal of final proposed plan by Secretary.

Subsequent to the hearing of record, the Commissioner shall prepare all pertinent materials for the review of the Associate Solicitor. Pertinent materials shall include:

(a) The tribal proposed plan and any alternate plans;

(b) A statement on the hearing of record and other evidence reflecting the

extent to which such proposed plan meets the desires of the affected tribe or group, including minority views;

(c) A copy of the transcript of the hearing of record;

(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 social and economic report, if any has been required;

(f) 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;

(g) A statement reflecting funds available to the tribe from any source in addition to the judgment funds, the status of the tribal budget and the nature and results of the investment of the judgment funds;

(h) A statement concerning attorney fees and litigation expenses which are of record (all allowable litigation expenses not paid by the date of the appropriation shall be made known to and paid by the Secretary prior to the date a plan is submitted);

(i) A statement justifying the proposed programing of any amount less than twenty (20) per centum of the total funds, including interest and the results of investments, accruing to any formally organized, reservation-based tribe or group or formally organized Oklahoma or Alaska Native entity;

(j) 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;

(k) And a statement regarding the insurance of the proper performance of effective plans, including a timetable prepared by the Area Director 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, and after the Associate Solicitor and the Commissioner have thoroughly reviewed all aspects of the proposed plan and other materials, the Secretary shall submit the final proposed plan, together with the other materials, simultaneously to each of the Chairmen of the Congressional Committees, to the governing body of the affected tribe or group, and to the Area Director and the Superintendent.

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 before the Act. The Secretary shall give priority consideration to all such judgments in the order in which funds have been appropriated. He shall also consider priorities for all tribes or groups who have developed plans by the date of the Act and have current tribal

rolls, or are actively engaged in bringing current such rolls.

§ 60.6 Submittal of proposed legislation by Secretary.

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 Chairman of both Congressional Committees, to the governing body of the affected tribe or group, to the Area Director and to the Superintendent. Such proposed legislation shall be developed on the basis of further consultation with the tribal governing body, the Area Director and the Superintendent.

In any instance in which the Secretary determines that circumstances do not permit the preparation and submission of a plan as provided in the Act, he shall submit, within the 180-day period, proposed legislation simultaneously to both Congressional Committees and after appropriate consultation with the affected tribe or group.

§ 60.7 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.

The effective date of all plans, including those contained in the form of legislation, unless otherwise provided by Congress, shall be the approval date.

§ 60.8 Enrollment aspects of plans.

An approved plan including provisions for enrollment, for either an organized tribe or group or a descendant group, and in which the Secretary declares in the plan that publication of enrollment rules and regulations is necessary, shall be implemented through the publication of such rules and regulations in the FEDERAL REGISTER. Enrollment rules and regulations, including those published as amendments to part 41 of this title, shall be prepared by the Bureau of Indian Affairs and shall be submitted for publication in the FEDERAL REGISTER within fifteen (15) days of the approval date of a plan. Individual descendants 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. Unless otherwise provided by Congress, heirs or legatees of deceased persons named on a tribal roll closed and made final by Act of Congress shall not be eligible to participate in the use or distribution of judgment funds unless they, themselves, have ancestry in the tribe or group determined to be entitled to the judgment funds or in the aggrieved historic tribe.

§ 60.9 Programing aspects of plans.

In assessing the programing percentage contained in a proposed plan, the Secretary shall consider the following factors: the percentage of tribal members residing on or near the subject reservation, including trust land 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; and the availability of funds for programing purposes derived from sources other than the subject judgment.

§ 60.10 Per capita payment aspects of plans and protection of funds accruing to minors and legal incompetents.

Per capita payments shall be made in accordance with conditions to be prescribed in the plan. The shares of deceased beneficiaries shall be held in Individual Indian Money Accounts until their heirs or legatees are determined, and shall be enhanced by investment earnings. Protection of the shares of minors and legal incompetents shall be part of approved plans containing per capita payment aspects. The Commissioner shall insure the protection of such shares, whether they be invested individually or collectively. Interest accruing on the shares of minors and incompetents shall be the property of such minors and incompetents and shall not be subject to State or Federal income taxes.

All per capita shares or portions thereof not cashed and remaining with the Federal Government shall be maintained separately and be enhanced by investment. No per capita share or a portion thereof shall be transferred to the U.S. Treasury as "Monies Belonging to Individuals Whose Whereabouts are Unknown." The same applies to those shares or portions thereof which may be maintained in Individual Indian Money Accounts or elsewhere.

§ 60.11 Investment of judgment funds.

The Commissioner shall invest the judgment funds as soon as possible subsequent to the appropriation of the funds.

The principal of the judgment funds in an investment status shall be withdrawn only as currently needed to effect specific portions of approved plans. All funds, including interest, not currently needed to effect programing or per capita payments shall remain in an investment status.

All interest and investment income earned on the judgment funds shall be invested at the highest rate of interest available and shall be withdrawn as described above with relation to the principal.

§ 60.12 Insuring the proper performance of effective plans.

The Area Director, in cooperation with the tribal governing body, shall establish a timetable, to 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 effective 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 by the Area Office, Agency Office, or the affected tribe or group. 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.

JOHN C. WHITAKER,
Acting Secretary of the Interior.

NOVEMBER 7, 1973.

[FR Doc.73-24247 Filed 11-13-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1121, 1126, 1127, 1128, 1129, 1130]

[Docket Nos. AO-231-A41, etc.]

MILK IN THE NORTH TEXAS AND CERTAIN OTHER MARKETING AREAS

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing Area	Docket No.
1120	North Texas.....	AO-231-A41.
1121	South Texas.....	AO-364-A8.
1127	San Antonio, Tex.....	AO-232-A27.
1123	Central West Texas.....	AO-233-A30.
1129	Austin-Waco, Tex.....	AO-236-A23.
1130	Corpus-Christi, Tex.....	AO-239-A27.

Notice is hereby given of a public hearing to be held at the Executive Inn, 3232 West Mockingbird Lane, Dallas, Texas 75247, on December 3, 1973, beginning at 1:30 p.m., local time, with respect to proposed amendments to the tentative marketing agreements and to the orders, regulating the handling of milk in the North Texas, South Texas, San Antonio, Central West Texas, Austin-Waco, and Corpus Christi marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).