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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.

CERAMIC TABLEWARE—Presidential proclamation adjusting import duties 8369

ECONOMIC STABILIZATION—IRS notices on Price Comm. rulings concerning cumulative price increases by non-institutional providers of health services, an application of the definition of "control," and the inclusion of alcoholic beverages as food products for the purposes of economic stabilization regulations (3 documents) 8403

HIGHWAY DEVELOPMENT AND THE PUBLIC INTEREST—Federal Highway Administration proposed guidelines to assure the consideration of social, economic, and environmental factors in the development of federally aided highway projects; comments by 5–15–72 8398

DRUG EFFICACY—
- FDA issues effectiveness classification and marketing status for a bronchial asthma/allergy product 8405
- FDA finds Lotusate tablets containing talbutal lack evidence of effectiveness for psychosis, hysteria, and other labeled uses 8406
- FDA finds two sulfa compounds lack substantial evidence of effectiveness 8405

INDIAN LANDS—Interior Dept. proposed revision concerning issuances of patents in fee, the sale of certain lands, and other matters; comments within 30 days 8384

REINSURANCE CONTRACTS—HEW amends terms and conditions for contracts covering losses resulting from riots and civil disorders; effective 4–26–72 8379

SAVINGS AND LOAN ASSOCIATIONS—FHLBB amendment requiring Board approval of changes of home or branch office locations 8373

HeinOnline -- 37 Fed. Reg. 8365 1972

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 121]

ISSUANCE OF PATENTS IN FEE, CERTIFICATES OF COMPETENCY, REMOVAL OF RESTRICTIONS, AND SALE OF CERTAIN INDIAN LANDS

Notice of Proposed Rule Making

APRIL 18, 1972.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 F.R. 13938).

Notice is hereby given that it is proposed to revise Part 121, Subchapter K, Chapter I, Title 25 of the Code of Federal Regulations. This revision is proposed pursuant to the authority contained in section 161 of the Revised Statutes (5 U.S.C. 301).

In the main, this revision consists of the realignment of materials to present a more logical sequence; the deletion of material regarded as advisory rather than regulatory in nature; and the addition of certain material which more fully encompasses the authorities found in the statutes. In addition, certain additions, changes and deletions in these proposed regulations are designed to more fully explain and implement the policy of the Secretary of the Interior.

The major changes and revisions are as follows:

1. Section 121.1(e): A definition of competency is set out, whereas previously there was no such standard of general application in Part 121. This definition is the only precise standard for the determination of competency set out by the Congress, and, although it was prescribed in an act which applies only to the Five Civilized Tribes (Act of Aug. 11, 1955 (69 Stat. 666)), it seems reasonable that the standard be used generally.

2. Section 121.2: This provides for withholding action to be applied in order to facilitate consolidation of Indian lands where possible. The addition will make regulatory the principles of the December 4, 1961, memorandum of the Commissioner of Indian Affairs and provide, in addition, a right of appeal from withholding action.

3. Section 121.5(a): Under the present regulations if an applicant is competent, the issuance of a fee patent is mandatory. This revision would reflect the authority derived from the authorizing acts and allow the exercise of discretion in the issuance of fee patents as it may now be exercised in the issuance of orders removing restrictions and certificates of competency.

4. Section 121.5(d): This implements and explains the Act of June 30, 1954 (68 Stat. 358), which grants unrestricted rights in oil and gas to certain Indians of the Fort Peck Reservation and makes provision for the future issuance of fee patents covering oil and gas, as well as the issuance of fee patents covering the entire interest in certain land.

5. Section 121.12(b): This section has been changed to permit negotiated sales of lands belonging to certain members of the Five Civilized Tribes after the issuance of a conditional order removing restrictions. Under the present regulations (§ 121.37) the land included in a conditional order removing restrictions must be advertised.

6. Section 121.14: This section simplifies the procedure for an administrative appeal from a decision to issue an order removing restrictions to a member of the Five Civilized Tribes without application under the Act of August 11, 1955 (69 Stat. 666). It provides that to the extent possible, such appeals will be handled under the procedure prescribed in Part 2.

7. The heading for former §§ 121.9 through 121.22, Sales and Exchanges of Individually Owned Trust or Restricted Land, Exclusive of Five Civilized Tribes Land, is now applicable to §§ 121.17 through 121.32 and the heading has been changed to "Sales, Exchanges and Conveyances of Trust or Restricted Lands", to permit such sales by members of the Five Civilized Tribes if no statutory authority exists to prevent such transfers under these sections.

8. Section 121.32: This section has been changed pursuant to the Solicitor's Opinion M-36708 dated July 18, 1967, as to lands owned or acquired by an Indian in fee simple status.

9. Section 121.33: This section implements the Act of May 18, 1916 (39 Stat. 127; 25 U.S.C. 378), which authorizes the Secretary, in certain instances, to partition an inherited trust allotment without the consent of all heirs.

10. Section 121.35: This section has been changed to permit deferred payments sales under such terms as are acceptable to the Secretary and the Indian owners.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed revision to the Bureau of Indian Affairs, Washington, D.C. 20242, within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

LOUIS R. BRUCE,
Commissioner.

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

Sec.
121.1 Definitions.
121.2 Withholding action on application.

ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS

121.3 Information regarding status of applications for removal of Federal supervision over Indian lands.
121.4 Application for patent in fee.
121.5 Issuance of patent in fee.
121.6 Issuance of patents in fee to non-Indians and Indians with whom a special relationship does not exist.
121.7 Application for certificate of competency.
121.8 Issuance of certificate of competency.
121.9 Certificates of competency to certain Osage adults.
121.10 Application for orders removing restrictions, except Five Civilized Tribes.
121.11 Issuance of orders removing restrictions, except Five Civilized Tribes.
121.12 Removal of restrictions, Five Civilized Tribes, after application under authority other than section 2(a) of the Act of August 11, 1955.
121.13 Removal of restrictions, Five Civilized Tribes, after application under section 2(a) of the Act of August 11, 1955.
121.14 Removal of restrictions, Five Civilized Tribes, without application.
121.15 Judicial review of removal of restrictions, Five Civilized Tribes, without application.
121.16 Effect of order removing restrictions, Five Civilized Tribes.

SALES, EXCHANGES AND CONVEYANCES OF TRUST OR RESTRICTED LANDS

121.17 Sales, exchanges, and conveyances by, or with the consent of the individual Indian owner.
121.18 Sale with the consent of natural guardian or person designated by the Secretary.
121.19 Sale by fiduciaries.
121.20 Sale by Secretary of certain land in multiple ownership.
121.21 Sale or exchange of tribal land.
121.22 Secretarial approval necessary to convey individual owned trust or restricted lands or land owned by a tribe.
121.23 Applications for sale, exchange or gift.
121.24 Appraisal.
121.25 Negotiated sales, gifts and exchanges of trust or restricted lands.
121.26 Advertisement.
121.27 Procedure of sale.
121.28 Action at close of bidding.
121.29 Rejection of bids; disapproval of sale.
121.30 Bidding by employees.
121.31 Cost of conveyance; payment.
121.32 Irrigation fee; payment.

HeinOnline -- 37 Fed. Reg. 8384 1972

PARTITIONS OF INHERITED ALLOTMENTS

Sec.
121.33 Partition.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

121.34 Approval of mortgage and deeds of trust.
121.35 Deferred payment sales.

AUTHORITY: The provisions of this Part 121 issued under R.S. 161; 5 U.S.C. 301. Interpret or apply sec. 7, 32 Stat. 275, 34 Stat. 1018, sec. 1, 35 Stat. 444, sec. 1 and 2, 36 Stat. 855, as amended, 856, as amended, sec. 17, 39 Stat. 127, 40 Stat. 579, 62 Stat. 236, sec. 2, 40 Stat. 606, 68 Stat. 358, 69 Stat. 666; 25 U.S.C. 378, 379, 405, 404, 372, 373, 483, 355, unless otherwise noted.

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.

§ 121.1 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

(b) "Agency" means an Indian agency or other field unit of the Bureau of Indian Affairs having trust or restricted Indian land under its immediate jurisdiction.

(c) "Restricted land" means land or any interest therein, the title to which is held by an individual Indian, subject to Federal restrictions against alienation or encumbrance.

(d) "Trust land" means land or any interest therein held in trust by the United States for an individual Indian.

(e) "Competent" means the possession of sufficient ability, knowledge, experience, and judgment to enable an individual to manage his business affairs, including the administration, use, investment, and disposition of any property turned over to him and the income or proceeds therefrom, with such reasonable degree of prudence and wisdom as will be apt to prevent him from losing such property or the benefits thereof. (Act of August 11, 1955 (69 Stat. 666).)

(f) "Tribe" means a tribe, band, nation, community, group, or Pueblo of Indians.

§ 121.2 Withholding action on application.

Action on any application, which if approved would remove Indian land from restricted or trust status, may be withheld, if the Secretary determines that such removal would adversely affect the best interest of other Indians, or the tribes, until the other Indians or the tribes so affected have had a reasonable opportunity to acquire the land from the applicant. If action on the application is to be withheld, the applicant shall be advised that he has the right to appeal the withholding action pursuant to the provisions of Part 2 of this chapter.

ISSUING PATENTS IN FEE, CERTIFICATES OF COMPETENCY OR ORDERS REMOVING RESTRICTIONS

§ 121.3 Information regarding status of applications for removal of Federal supervision over Indian lands.

The status of applications by Indians for patents in fee, certificates of competency, or orders removing restrictions shall be disclosed to employees of the Department of the Interior whose duties require that such information be disclosed to them; to the applicant or his attorney, upon request; and to Members of Congress who inquire on behalf of the applicant. Such information will be available to all other persons, upon request, 15 days after the fee patent has been issued by the Bureau of Land Management, or 15 days after issuance of certificate of competency or order removing restrictions, or after the application has been rejected and the applicant notified. Where the termination of the trust or restricted status of the land covered by the application would adversely affect the protection and use of Indian land remaining in trust or restricted status, the owners of the land that would be so affected may be informed that the application has been filed.

§ 121.4 Application for patent in fee.

Any Indian 21 years of age or over may apply for a patent in fee for his trust land. A written application shall be made in the form approved by the Secretary and shall be completed and filed with the agency having immediate jurisdiction over the land.

§ 121.5 Issuance of patent in fee.

(a) An application may be approved and fee patent issued if the Secretary, in his discretion, determines that the applicant is competent. When the patent in fee is delivered, an inventory of the estate covered thereby shall be given to the patentee. (Acts of Feb. 8, 1887 (24 Stat. 388), as amended (25 U.S.C. 349); June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483), and other authorizing acts.).

(b) If an application is denied, the applicant shall be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of Part 2 of this chapter.

(c) White Earth Reservation: The Secretary will, pursuant to the Act of March 1, 1907 (34 Stat. 1015), issue a patent in fee to any adult mixed-blood Indian owning land within the White Earth Reservation in the State of Minnesota upon application from such Indian, and without consideration as to whether the applicant is competent.

(d) Fort Peck Reservation: Pursuant to the Act of June 30, 1954 (68 Stat. 358), oil and gas underlying certain allotments in the Fort Peck Reservation were granted to certain Indians to be held in trust for such Indians and provisions was made for issuance of patents in fee for such oil and gas or patents in fee for land in certain circumstances.

(1) Where an Indian or Indians were the grantees of the entire interest in the oil and gas underlying a parcel of land, and such Indian or Indians had before June 30, 1954, been issued a patent or patents in fee for any land within the Fort Peck Reservation, the title to the oil and gas was conveyed by the act in in fee simple status.

(2) Where the entire interest in the oil and gas granted by the act is after June 30, 1954, held in trust for Indians to whom a fee patent has been issued at any time, for any land within the Fort Peck Reservation, or who have been or are determined by the Secretary to be competent, the Secretary will convey, by patent, without application, therefor, unrestricted fee simple title to the oil and gas.

(3) Where the Secretary determines that the entire interest in a tract of land on the Fort Peck Reservation is owned by Indians who were grantees of oil and gas under the act and he determines that such Indians are competent, he will issue fee patents to them covering all interests in the land without application.

§ 121.6 Issuance of patents in fee to non-Indians and Indians with whom a special relationship does not exist.

Whenever the Secretary determines that trust land, or any interest therein, has been acquired through inheritance or devise by a non-Indian, or by a person of Indian descent to whom the United States owes no trust responsibility, the Secretary may issue a patent in fee for the land or interest therein to such person without application.

§ 121.7 Application for certificate of competency.

Any Indian 21 years old or over, except certain adult members of the Osage Tribe as provided in § 121.9, who holds land or an interest therein under a restricted fee patent may apply for a certificate of competency. The written application shall be made in the form approved by the Secretary and filed with the agency having immediate jurisdiction over the land.

§ 121.8 Issuance of certificate of competency.

(a) An application may be approved and a certificate of competency issued if the Secretary, in his discretion, determines that the applicant is competent. The delivery of the certificate shall have the effect of removing the restrictions from the land described therein. (Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372).)

(b) If the application is denied, the applicant shall be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of Part 2 of this chapter.

§ 121.9 Certificates of competency to certain Osage adults.

Applications for certificates of competency by adult members of the Osage Tribe of one-half or more Indian blood shall be in the form approved by the Secretary. Upon the finding by the Secretary that an applicant is competent, a

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certificate of competency may be issued removing restrictions against alienation of all restricted property and terminating the trust on all restricted property, except Osage headright interests, of the applicant.

CROSS-REFERENCE: For regulations pertaining to the issuance of certificates of competency to adult Osage Indians of less than one-half Indian blood, see Part 123 of this chapter.

§ 121.10 Application for orders removing restrictions, except Five Civilized Tribes.

Any Indian not under legal disability under the laws of the State where he resides or where the land is located, or the court-appointed guardian or conservator of any Indian, may apply for an order removing restrictions from his restricted land or the restricted land of his ward. The application shall be in writing setting forth reasons for removal of restrictions and filed with the agency having immediate jurisdiction over the lands.

§ 121.11 Issuance of orders removing restrictions, except Five Civilized Tribes.

(a) An application for an order removing restrictions may be approved and such order issued by the Secretary, in his discretion, if he determines that the applicant is competent or that removal of restrictions is in the best interests of the Indian owner. The effect of the order will be to remove the restrictions from the land described therein.

(b) If the application is denied, the applicant will be notified in writing, given the reasons therefor and advised of his right to appeal pursuant to the provisions of Part 2 of this chapter.

§ 121.12 Removal of restrictions, Five Civilized Tribes, after application under authority other than section 2(a) of the Act of August 11, 1955.

When an Indian of the Five Civilized Tribes makes application for removal of restrictions from his restricted lands under authority other than section 2(a) of the Act of August 11, 1955 (69 Stat. 666), such application may be for either unconditional removal of restrictions or conditional removal of restrictions, but shall not include lands or interest in lands acquired by inheritance or devise.

(a) If the application is for unconditional removal of restrictions and the Secretary, in his discretion, determines the applicant should have the unrestricted control of the land described in his application, the Secretary may issue an order removing restrictions therefrom.

(b) When the Secretary, in his discretion, finds that in the best interest of the applicant all or part of the land described in the application should be sold with conditions concerning terms of sale and disposal of the proceeds, the Secretary may issue a conditional order removing restrictions which shall be effective only and simultaneously with the execution of a deed by said applicant upon completion of an advertised sale or negotiated sale acceptable to the Secretary.

§ 121.13 Removal of restrictions, Five Civilized Tribes, after application under section 2(a) of the Act of August 11, 1955.

When an Indian of the Five Civilized Tribes makes application for removal of restrictions under authority of section 2(a) of the Act of August 11, 1955 (69 Stat. 666), the Secretary will determine the competency of the applicant.

(a) If the Secretary determines the applicant to be competent, he shall issue an order removing restrictions having the effect stated in § 121.16.

(b) If the Secretary rejects the application, his action is not subject to administrative appeal, notwithstanding the provisions concerning appeals in Part 2 of this chapter.

(c) If the Secretary rejects the application, or neither rejects nor approves the application within 90 days of the application date, the applicant may apply to the State district court in the county in which he resides for an order removing restrictions. If that State district court issues such order, it will have the effect stated in § 121.16.

§ 121.14 Removal of restrictions, Five Civilized Tribes, without application.

Section 2(b) of the Act of August 11, 1955 (69 Stat. 666), authorizes the Secretary to issue an order removing restrictions to an Indian of the Five Civilized Tribes without application therefor. When the Secretary determines an Indian to be competent, he shall notify the Indian in writing of his intent to issue an order removing restrictions 30 days after the date of the notice. This decision may be appealed under the provisions of Part 2 of this chapter within such 30 days. All administrative appeals under that part will postpone the issuance of the order. When the decision is not appealed within 30 days after the date of notice, or when any dismissal of an appeal is not appealed within the prescribed time limit, or when the final appeal is dismissed, an order removing restrictions will be issued.

§ 121.15 Judicial review of removal of restrictions, Five Civilized Tribes, without application.

When an order removing restrictions is issued, pursuant to § 121.14, a copy of such order will be delivered to the Indian, to any person acting in his behalf, and to the Board of County Commissioners for the county in which the Indian resides. At the time the order is delivered written notice will be given the parties that under the terms of the Act of August 11, 1955 (69 Stat. 666), the Indian or the Board of County Commissioners has, within 6 months of the date of notification, the right to appeal to the State district court for the district in which the Indian resides for an order setting aside the order removing restrictions. The timely initiation of proceedings in the State district court will stay the effective date of the order removing restrictions until such proceedings are concluded. If the State district court dismisses the appeal, the order removing restrictions will become effective 6 months after notification to the parties of such dismissal. The effect of the issuance of such order will be as prescribed in § 121.16.

§ 121.16 Effect of order removing restrictions, Five Civilized Tribes.

An order removing restrictions issued pursuant to the Act of August 11, 1955 (69 Stat. 666), on its effective date shall serve to remove all jurisdiction and supervision of the Bureau of Indian Affairs over money and property held by the United States in trust for the individual Indian or held subject to restrictions against alienation imposed by the United States. The Secretary shall cause to be turned over to the Indian full ownership and control of such money and property and issue in the case of land such title document as may be appropriate; *Provided,* That the Secretary may make such provisions as he deems necessary to insure payment of money loaned to any such Indian by the Federal Government or by an Indian tribe; *And provided further,* That the interest of any lessee or permittee in any lease, contract, or permit that is outstanding when an order removing restrictions becomes effective shall be preserved as provided in section 2(d) of the Act of August 11, 1955 (69 Stat. 666).

SALES, EXCHANGES AND CONVEYANCES OF TRUST OR RESTRICTED LANDS

§ 121.17 Sales, exchanges and conveyances by, or with the consent of the individual Indian owner.

Pursuant to the Acts of May 27, 1902 (32 Stat. 275; 25 U.S.C. 379); May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357); March 1, 1907 (34 Stat. 1018; 25 U.S.C. 405); May 29, 1908 (35 Stat. 444; 25 U.S.C. 404); June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), as amended May 25, 1926 (44 Stat. 629; 48 U.S.C. 355a–355d); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); and May 14, 1948 (62 Stat. 236; 25 U.S.C. 483); and pursuant to other authorizing acts, trust or restricted lands acquired by allotment, devise, inheritance, purchase, exchange, or gift may be sold, exchanged, and conveyed by the Indian owner with the approval of the Secretary or by the Secretary with the consent of the Indian owner.

§ 121.18 Sale with the consent of natural guardian or person designated by Secretary.

Pursuant to the Act of May 29, 1908 (35 Stat. 444; 25 U.S.C. 404), the Secretary may, with the consent of the natural guardian of a minor, sell trust or restricted land belonging to such minor; and the Secretary may, with the consent of a person designated by him, sell trust or restricted land belonging to Indians who are minor orphans without a natural guardian, and Indians who are non compos mentis or otherwise under legal disability. The authority contained in this act is not applicable to lands in Oklahoma, Minnesota, and South Dakota, nor to lands authorized to be sold by the

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Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

§ 121.19 Sale by fiduciaries.

Guardians, conservators, or other fiduciaries appointed by State courts, or by tribal courts operating under approved constitutions or law and order codes, may, upon order of the court, convey with the approval of the Secretary or consent to the conveyance by the Secretary of trust or restricted land belonging to their Indian wards who are minors, non compos mentis or otherwise under legal disability.

§ 121.20 Sale by Secretary of certain land in multiple ownership.

Pursuant to the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372), if the Secretary decides that one or more of the heirs who have inherited trust land are incapable of managing their own affairs, he may sell any or all interests in that land. This authority is not applicable to lands authorized to be sold by the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483).

§ 121.21 Sale or exchange of tribal land.

Certain tribal land may be sold or exchanged pursuant to the Acts of February 14, 1920 (41 Stat. 415; 25 U.S.C. 294); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); August 10, 1939 (53 Stat. 1351; 25 U.S.C. 463(e)); July 1, 1948 (62 Stat. 1214); June 4, 1953 (67 Stat. 41; 25 U.S.C. 293(a)); July 28, 1955 (69 Stat. 392), as amended August 31, 1964 (78 Stat. 747; 25 U.S.C. 608–608c); June 18, 1956 (70 Stat. 290; 25 U.S.C. 403a–2); July 24, 1956 (70 Stat. 626); May 19, 1958 (72 Stat. 121; 25 U.S.C. 463, Note); September 2, 1958 (72 Stat. 1762); April 4, 1960 (74 Stat. 13); April 29, 1960 (74 Stat. 85); December 11, 1963 (77 Stat. 349); August 11, 1964 (78 Stat. 389), and pursuant to other authorizing acts. Except as otherwise provided by law, and as far as practicable, the regulations in this Part 121 shall be applicable to sale or exchanges of such tribal land.

§ 121.22 Secretarial approval necessary to convey individual-owned trust or restricted lands or land owned by a tribe.

(a) *Individual lands.* Trust or restricted lands, or any interest therein, may not be conveyed without the approval of the Secretary. Moreover, inducing an Indian to execute an instrument purporting to convey any trust land or interest therein, or the offering of any such instrument for record, is prohibited and criminal penalties may be incurred. (See 25 U.S.C. 202 and 348.)

(b) *Tribal lands.* Lands held in trust by the United States for an Indian tribe, lands owned by a tribe with Federal restrictions against alienation and any other land owned by an Indian tribe may only be conveyed where specific statutory authority exists and then only with the approval of the Secretary unless the Act of Congress authorizing sale provides that approval is unnecessary. (See 25 U.S.C. 177.)

§ 121.23 Applications for sale, exchange or gift.

Applications for the sale, exchange or gift of trust or restricted land shall be filed in the form approved by the Secretary with the agency having immediate jurisdiction over the land. Applications may be approved if, after careful examination of the circumstances in each case, the transaction appears to be clearly justified in the light of the long-range best interest of the owner or owners or as under conditions set out in § 121.25(d).

§ 121.24 Appraisal.

Except as otherwise provided by the Secretary, an appraisal shall be made indicating the fair market value prior to making or approving a sale, exchange, or other transfer of title of trust or restricted land.

§ 121.25 Negotiated sales, gifts and exchanges of trust or restricted lands.

Those sales, exchanges, and gifts of trust or restricted lands specifically described in the following paragraphs (a), (b), (c), and (d) of this section may be negotiated; all other sales shall be by advertised sale, except as may be otherwise provided by the Secretary.

(a) *Consideration not less than the appraised fair market value.* Indian owners may, with the approval of the Secretary, negotiate a sale of and sell trust or restricted land for not less than the appraised fair market value: (1) When the sale is to the United States, States, or political subdivisions thereof, or such other sale as may be for a public purpose; (2) when the sale is to the tribe or a member of the tribe of the reservation where the land is located; or (3) when the Secretary determines it is impractical to advertise.

(b) *Exchange at appraised fair market value.* With the approval of the Secretary, Indian owners may exchange trust or restricted land, or a combination of such land and other things of value, for other lands or combinations of land and other things of value. The value of the consideration received by the Indian in the exchange must be at least substantially equal to the appraised fair market value of the consideration given by him.

(c) *Sale to coowners.* With the approval of the Secretary, Indian owners may negotiate a sale of and sell trust or restricted land to a coowner of that land. The consideration may be less than the appraised fair market value, if in the opinion of the Secretary there is a special relationship between the coowners or special circumstances exist.

(d) *Gifts and conveyances for less than the appraised fair market value.* With the approval of the Secretary, Indian owners may convey trust or restricted land, for less than the appraised fair market value or for no consideration when the prospective grantee is the owner's spouse, brother, sister, lineal ancestor of Indian blood or lineal descendant, or when some other special relationship exists between the grantor and grantee or special circumstances exist that in the opinion of the Secretary warrant the approval of the conveyance.

§ 121.26 Advertisement.

(a) Upon approval of an application for an advertised sale, notice of the sale will be published not less than 30 days prior to the date fixed for the sale unless a shorter period is authorized by the Secretary.

(b) The notice of sale will include (1) terms, conditions, place, date, hour, and methods of sale, including explanation of auction procedure as set out in § 121.27 (b)(2) if applicable; (2) where and how bids shall be submitted; (3) a statement warning all bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders or potential bidders; and (4) description of tracts, all reservations to which title will be subject and any restrictions and encumberances of record with the Bureau of Indian Affairs and any other information that may improve sale prospects.

§ 121.27 Procedure of sale.

Advertised sales shall be by sealed bids except as otherwise provided herein.

(a) (1) Bids, conforming to the requirements set out in the advertisement of sale, along with a certified check, cashier's check, money order, or U.S. Treasury check, payable to the Bureau of Indian Affairs, for not less than 10 percent of the amount of the bid, must be enclosed in a sealed envelope marked as prescribed in the notice of sale. A cash deposit may be submitted in lieu of the above-specified negotiable instruments at the bidder's risk. Tribes submitting bids pursuant to this paragraph may guarantee the required 10 percent deposit by an appropriate resolution; (2) the sealed envelopes containing the bids will be publicly opened at the time fixed for sale. The bids will be announced and will be appropriately recorded.

(b) The policy of the Secretary recognizes that in many instances a tribe or a member thereof has a valid interest in acquiring trust or restricted lands offered for sale. (1) With the consent of the owner and when the notice of sale so states, the tribe or members of such tribe shall have the right to meet the high bid. (2) Provided the tribe is not the high bidder and when one or more acceptable sealed bids are received and when so stated in the notice of sale, an oral auction may be held following the bid opening. Bidding in the auction will be limited to the tribe, and to those who submitted sealed bids at 75 percent or more of the appraised value of the land being auctioned. At the conclusion of the auction the highest bidder must increase his deposit to not less than 10 percent of his auction bid.

§ 121.28 Action at close of bidding.

(a) The officer in charge of the sale shall publicly announce the apparent highest acceptable bid. The deposits submitted by the unsuccessful bidders shall be returned immediately. The deposit submitted by the apparent successful bidder shall be held in a special account.

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(b) If the highest bid received at an advertised sale is less than the appraised fair market value of the land, the Secretary with the consent of the owner may accept that bid if the amount bid approximates said appraised fair market value and in the Secretary's judgment is the highest price that may be realized in the circumstances.

(c) The Secretary shall award the bid and notify the apparent successful bidder that the remainder of the purchase price must be submitted within 30 days. (1) Upon a showing of cause the Secretary may, in his discretion, extend the time of payment of the balance due. (2) If the remainder of the purchase price is not paid within the time allowed, the bid will be rejected and the apparent successful bidder's 10 percent deposit will be forfeited to the landowner's use.

(d) The issuance of the patent or delivery of a deed to the purchaser will not be authorized until the balance of the purchase price has been paid, except that the fee patent may be ordered in cases where the purchaser is obtaining a loan from an agency of the Federal Government and such agency has given the Secretary a commitment that the balance of the purchase price will be paid when the fee patent is issued.

§ 121.29 Rejection of bids; disapproval of sale.

The Secretary reserves the right to reject any and all bids before the award, after the award, or at any time prior to the issuance of a patent or delivery of a deed, when he shall have determined such rejection to be in the best interests of the Indian owner.

§ 121.30 Bidding by employees.

Except as authorized by the provisions of Part 251 of this chapter, no person employed in Indian Affairs shall directly or indirectly bid, make, or prepare any bid, or assist any bidder in preparing his bid. Sales between Indians, either of whom is an employee of the U.S. Government, are governed by the provisions of Part 251 of this chapter (see 25 U.S.C. 68 and 441).

§ 121.31 Cost of conveyance; payment.

Pursuant to the Act of February 14, 1920 (41 Stat. 415), as amended by the Act of March 1, 1933 (47 Stat. 1417; 25 U.S.C. 413), the Secretary may in his discretion collect from a purchaser reasonable fees for work performed or expense incurred in the transaction. The amount so collected shall be deposited to the credit of the United States as general fund receipts, except as stated in paragraph (b) of this section.

(a) (1) The amount of the fee shall be $22.50 for each transaction.

(2) The fee may be reduced to a lesser amount or may be waived, if the Secretary determines circumstances justify such action.

(b) (1) If any or all of the costs of the work performed or expenses incurred are paid with tribal funds, an alternate schedule of fees may be established, subject to approval of the Secretary, and that part of such fees deemed appropriate may be credited to the tribe.

(2) When the purchaser is the tribe which bears all or any part of such costs, the collection of the proportionate share from the tribe may be waived.

§ 121.32 Irrigation fee; payment.

Collection of all construction costs against any Indian-owned lands within Indian irrigation projects is deferred as long as Indian title has not been extinguished. (Act of July 1, 1932 (47 Stat. 564; 25 U.S.C. 386a).) This statute is interpreted to apply only where such land is owned by Indians either in trust or restricted status.

(a) When any person whether Indian or non-Indian acquires Indian lands in a fee simple status that are part of an Indian irrigation project he must enter into an agreement, (1) to pay the pro rata share of the construction of the project chargeable to the land, (2) to pay all construction costs that accrue in the future, and (3) to pay all future charges assessable to the land which are based on the annual cost of operation and maintenance of the irrigation system.

(b) Any operation and maintenance charges that are delinquent when Indian land is sold will be deducted from the proceeds of sale unless other acceptable arrangements are made to provide for their payment prior to the approval of the sale.

(c) A lien clause covering all unpaid irrigation construction costs, past and future, will be inserted in the patent or other instrument of conveyance issued to all purchasers of restricted or trust lands that are under an Indian irrigation project.

CROSS-REFERENCE: See Part 128 and Part 129 and cross-references thereunder in this chapter for further regulations regarding sale of irrigable lands.

PARTITIONS OF INHERITED ALLOTMENTS

§ 121.33 Partition.

(a) *Partition without application.* If the Secretary of the Interior shall find that any inherited trust allotment or allotments (as distinguished from lands held in a restricted fee status or authorized to be sold under the Act of May 14, 1948 (62 Stat. 236; 25 U.S.C. 483)), are capable of partition to the advantage of the heirs, he may cause such lands to be partitioned among them, regardless of their competency, patents in fee to be issued to the competent heirs for their shares and trust patents to be issued to the incompetent heirs for the lands respectively or jointly set apart to them, the trust period to terminate in accordance with the terms of the original patent or order of extension of the trust period set out in said patent. (Act of May 18, 1916 (39 Stat. 127; 25 U.S.C. 378).) The authority contained in the Act of May 18, 1916, is not applicable to lands authorized to be sold by the Act of May 14, 1948, nor to land held in restricted fee status.

(b) *Application for partition.* Heirs of a deceased allottee may make written application, in the form approved by the Secretary, for partition of their trust or restricted land. If the Secretary finds the trust lands susceptible of partition, he may issue new patents or deeds to the heirs for the portions set aside to them. If the allotment is held under a restricted fee title (as distinguished from a trust title), partition may be accomplished by the heirs executing deeds approved by the Secretary, to the other heirs for their respective portions.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

§ 121.34 Approval of mortgages and deeds of trust.

Any individual Indian owner of trust or restricted lands, may with the approval of the Secretary execute a mortgage or deed of trust to his land. Prior to approval of such mortgage or deed of trust, the Secretary shall secure appraisal information as he deems advisable. Such lands shall be subject to foreclosure or sale pursuant to the terms of the mortgage or deed of trust in accordance with the laws of the State in which the lands are located. For the purpose of foreclosure or sale proceedings under this section, the Indian owners shall be regarded as vested with unrestricted fee simple title to the lands (Act of March 29, 1956 (70 Stat. 62; 25 U.S.C. 483a)).

§ 121.35 Deferred payment sales.

When the Indian owner and purchaser desire, a sale may be made or approved on the deferred payment plan. The terms of the sale will be incorporated in a memorandum of sale which shall constitute a contract for delivery of title upon payment in full of the amount of the agreed consideration. The deed executed by the grantor or grantors will be held by the Superintendent and will be delivered only upon full compliance with the terms of sale. If conveyance of title is to be made by fee patent, request therefor will be made only upon full compliance with the terms of the sale. The terms of the sale shall require that the purchaser pay not less than 10 percent of the purchase price in advance as required by the Act of June 25, 1910 (36 Stat. 855), as amended (25 U.S.C. 372); terms for the payment of the remaining installments plus interest shall be those acceptable to the Secretary and the Indian owner. If the purchaser on any deferred payment plan makes default in the first or subsequent payments, all payments, including interest, previously made will be forfeited to the Indian owner.

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INTERSTATE COMMERCE COMMISSION

[49 CFR Ch. X]

[Ex Parte 286]

DETERMINATION OF AVOIDABLE LOSSES

Order To Show Cause

APRIL 14, 1972.

It appearing, that by notice of proposed rulemaking and order (36 F.R.

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