

# code of federal regulations

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**Indians**

**25**

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Revised as of April 1, 1983

CONTAINING  
A CODIFICATION OF DOCUMENTS  
OF GENERAL APPLICABILITY  
AND FUTURE EFFECT

AS OF APRIL 1, 1983

*With Ancillaries*

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after death; (c) where final rolls have been prepared constituting the legal membership of the tribe, only Indians whose names appear thereon are entitled to share in future payments, after-born children being excluded and the shares of deceased enrollees paid to the heirs if determined or if not determined credited to the estate pending determination; and (d) the shares of competent Indians will be paid to them directly and the shares of incompetents and minors deposited for expenditure under the individual Indian money regulations.

**CROSS REFERENCES:** For regulations pertaining to the determination of heirs and approval of wills, see Part 15 and §§ 11.30 through 11.32C of this chapter. For individual Indian money regulations, see Part 115 of this chapter.

#### § 111.2 Enrolling non-full-blood children.

Where an Indian woman was married to a white man prior to June 7, 1897, and was at the time of her marriage a recognized member of the tribe even though she left it after marriage and lived away from the reservation, the children of such a marriage should be enrolled—and, also in the case of an Indian woman married to a white man subsequent to the above date but who still maintains her affiliation with the tribe and she and her children are recognized members thereof; however, where an Indian woman by marriage with a white man after June 7, 1897, has, in effect, withdrawn from the tribe and is no longer identified with it, her children should not be enrolled. In case of doubt all the facts should be submitted to the Bureau of Indian Affairs, Washington, D.C., for a decision.

#### § 111.3 Payments by check.

All payments should be made by check. In making payments to competent Indians, each check should be drawn to the order of the enrollee and given or sent directly to him. Powers of attorney and orders given by an Indian to another person for his share in a payment will not be recognized. Superintendents will note in the "Remarks" column on the roll the date of birth of each new enrollee and the date of death of deceased annuitants.

#### § 111.4 Election of shareholders.

An Indian holding equal rights in two or more tribes can share in payments to only one of them and will be required to elect with which tribe he wishes to be enrolled and to relinquish in writing his claims to payments to the other. In the case of a minor the election will be made by the parent or guardian.

#### § 111.5 Future payments.

Indians who have received or applied for their pro rata shares of an interest-bearing tribal fund under the act of March 2, 1907 (34 Stat. 1221; 25 U.S.C. 119, 121), as amended by the act of May 18, 1916 (39 Stat. 128), will not be permitted to participate in future payments made from the accumulated interest.

### PART 112—REGULATIONS FOR PRO RATA SHARES OF TRIBAL FUNDS

#### Sec.

- 112.1 Fee simple patentees.
- 112.2 Applicants who have received neither fee simple patents nor certificates of competency.
- 112.3 Applicants who are mentally or physically incapable of managing their affairs.
- 112.4 Interest in pro rata shares not vested rights unless application approved.
- 112.5 Basis of distribution; pro rata shares.
- 112.6 Disposition of pro rata share in event of applicant's death.
- 112.7 Pro rata shares of minors.

**AUTHORITY:** Sec. 2, 34 Stat. 1221, as amended; 25 U.S.C. 121.

**SOURCE:** 22 FR 10549, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**CROSS REFERENCE:** For regulations pertaining to the determination of heirs and approval of wills, see Part 15 and §§ 11.30 through 11.32 of this chapter.

#### § 112.1 Fee simple patentees.

When the applicant has been granted a patent in fee or certificate of competency, that fact will be accepted as prima facie evidence of his competency, but in forwarding applications of this class the agent will give the date on which the patent was issued, report whether in his judgment the patentee has made proper use of his privileges

and would make good use of his share of the tribal funds if paid to him, and make a specific recommendation for approval or disapproval of the application.

§ 112.2 Applicants who have received neither fee simple patents nor certificates of competency.

In the case of an applicant who has received neither a fee simple patent nor a certificate of competency, the application must be accompanied by evidence which will establish the fact that he is capable of managing his own affairs. In forwarding applications of this class the superintendent will report fully, as follows:

(a) Is the applicant living on this allotment? If so, is he making reasonable efforts to cultivate his land and to support himself and family? If he is not living on his allotment, what is his occupation?

(b) Is any part of his allotment leased? If so, to what extent does he depend upon the rent therefrom to support himself and family?

(c) Has the applicant been given the privilege of leasing his own lands; and if so, with what result?

(d) Has he an interest in any inherited land? If he has sold or leased any inherited land, how has he managed the proceeds?

(e) Is the applicant of good moral character?

(f) Is he addicted to the use of intoxicants? And if so, does this habit, in the judgment of the agent, unfit him to make proper use of his share of the tribal funds?

(g) What is his physical condition?

(h) Is the applicant in debt? If so, to what extent and for what purpose was the debt incurred?

(i) Has the applicant the necessary business qualifications to enable him to manage his own affairs?

(j) Give such other information concerning the applicant as will aid the office in determining whether or not to approve his application.

(k) Make a specific recommendation for the approval or disapproval of the application.

§ 112.3 Applicants who are mentally or physically incapable of managing their affairs.

Applications of this class must be accompanied by evidence that will establish the advisability of withdrawing the share. If the application is approved, the funds will be deposited to the credit of the Indian and handled as individual Indian money.

In forwarding applications the agent will report fully as follows:

(a) Sex and exact date of birth.

(b) Identify the applicant by allotment and last annuity-roll numbers.

(c) What is the actual physical condition of the applicant. If suffering from disease, submit certificate of physician if necessary to establish disability.

(d) What is the actual mental condition of the applicant? Answer fully.

(e) What are the material resources of the applicant?

(f) What advantages will accrue to applicant by withdrawal of his or her share at this time?

(g) Has it been explained to the applicant and does he understand that if the application is approved the funds will be deposited to his credit as individual Indian money to be expended under the supervision of the superintendent?

(h) Make a specific recommendation for the approval or disapproval of the application.

[22 FR 10549, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982, and amended at 48 FR 13414, Mar. 31, 1983]

CROSS REFERENCE: For individual Indian money regulations, see Part 115 of this chapter.

§ 112.4 Interest in pro rata shares not vested rights unless application approved.

On November 6, 1908, the Secretary of the Interior decided, in effect, that the interest of an Indian in a pro rata share of a tribal fund does not vest in the Indian an inheritable property until after his application has been approved by the Secretary and an order signed by him segregating it from the tribal fund. Applications for shares of funds under this act may be made at any time, but in view of the Secre-

tary's decision such applications should be forwarded to the Bureau by the superintendent as soon as they are completed and filed with him. Applications from those who are blind, decrepit, etc., must be made special and forwarded to the Bureau of Indian Affairs, Washington, D.C., as soon as possible.

§ 112.5 Basis of distribution; pro rata shares.

In estimating the pro rata share of an individual, the last annuity payroll prior to July 1, or January 1 of each year will be taken as a basis of distribution. Where no payment has been made within 1 year, the last census, if taken within the year, will be the basis. If no census has been taken or payment made within a year, the last available record—either census or annuity roll will be used.

§ 112.6 Disposition of pro rata share in event of applicant's death.

In the event of the death of an applicant prior to the approval of his application by the Secretary of the Interior, the share to which he would have been entitled, if living, will revert to the tribe. In case of the death of an applicant after approval of his application and the signing by the Secretary of the Interior of an order for the segregation of his share, but before payment is made, his share will descend to his legal heirs and should be deposited to the credit of the estate pending formal determination thereof.

**CROSS REFERENCE:** For regulations pertaining to the determinations of heirs and approval of wills, see Part 15 and §§ 11.30 through 11.32C of this chapter.

§ 112.7 Pro rata shares of minors.

The shares of minors will not be withdrawn except when necessary for their own benefit. The application should be signed by the parent or guardian and transmitted to the Bureau by the superintendent with his recommendation as in other cases and a full explanation of the circumstances which justify the withdrawal. Such shares will be deposited to the credit of the minors subject to expenditure under the individual Indian money regulations. The term "minor,"

as used in this section, shall be interpreted in conformity with the State law.

**CROSS REFERENCE:** For individual Indian money regulations, see Part 115 of this chapter.

**PART 113—INDIAN MONEYS, PROCEEDS OF LABOR (IMPL)**

Sec.

- 113.1 Purpose and scope.
- 113.2 Definitions.
- 113.3 Sources of IMPL funds.
- 113.4 Collection and deposit of IMPL funds.
- 113.5 Investment of IMPL funds.
- 113.6 Expenditure and use of IMPL funds.
- 113.7 Development and approval of IMPL use plans.
- 113.8 Limitations on use of IMPL funds.

**AUTHORITY:** 25 U.S.C. 2, 9, 155.

**SOURCE:** 46 FR 47774, Sept. 30, 1981, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 113.1 Purpose and scope.

The purpose of these regulations is to set forth the conditions governing the receipt, deposit, investment, and use of miscellaneous revenues derived from BIA agencies and schools under the Act of March 3, 1883, as amended (25 U.S.C. 155). These regulations apply only to income belonging to the federal government and not to tribal funds or moneys belonging to individual Indians.

§ 113.2 Definitions.

(a) "Agency" means any field office of the Bureau officially designated as an Indian agency and which provides direct services at the local level to Indians and Indian tribes, who are recognized by the Bureau as eligible for federal services to Indians because of their status as Indians.

(b) "Agency Superintendent" means the Bureau official in charge of a Bureau agency.

(c) "Bureau" of "BIA" means the Bureau of Indian Affairs, Department of the Interior.

(d) "Enterprise operation" means an economic activity operated at a Bureau agency or school which is designated to provide goods or services where such goods or services are not