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Indians

25

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PART 125—PAYMENT OF SIOUX BENEFITS

Sec.

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AUTHORITY: Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895; Act of June 10, 1896, c. 398, 29 Stat. 321, 334; Act of May 21, 1928, c. 662, 45 Stat. 984; Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474.

SOURCE: 46 FR 36136, July 14, 1981, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 125.1 Scope.

The regulations in this Part govern the payment of "Sioux benefits" to allotted Sioux Indians under the Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895; the Act of June 10, 1896, c. 398, 29 Stat. 321, 334; and the Act of May 21, 1928, c. 662, 45 Stat. 984; and to unallotted Sioux Indians on the Cheyenne River Indian Reservation under the Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474.

§ 125.2 Purpose.

The purpose of these regulations is to implement the provisions of federal statutes which provide for the payment of "Sioux benefits" to Sioux Indians by setting forth the criteria governing eligibility for and entitlement to "Sioux benefits" and by establishing procedures governing application for and payment of "Sioux benefits."

§ 125.3 Definitions.

As used in this Part, the term—

(a) "Area Director" means the Area Director, Aberdeen Area Office, BIA, or his/her delegate.

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

(c) "Commissioner" means the Commissioner of Indian Affairs, BIA, or his/her delegate.

(d) "Sioux benefits" means the allotment of stock and farming equipment

plus \$50.00 cash as provided for by the Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895, or its commuted cash value as provided in the Act of June 10, 1896, c. 398, 29 Stat. 321, 334.

(e) "Sioux Indian" means a member of any of the bands or tribes comprising the Sioux Nation of Indians to which the Act of March 2, 1889, c. 405, 25 Stat. 888, applied.

(f) "Single person" includes all unmarried persons (other than an unmarried person under the age of eighteen years) and any person who is legally separated, divorced, or widowed.

(g) "Head of a family" means only: (1) A married person who meets the requirements of § 125.4(c)(1) or (2) (if living with his/her spouse) or § 125.4(c)(3) (if not living with his/her spouse), and (2) an unmarried person under the age of eighteen years who meets the requirements of § 125.4(c)(3).

(h) For the purpose of determining family support under §§ 125.4(c)(2) and 125.4(c)(3), "family" means two or more persons (including the applicant) related by blood, through marriage, or by adoption to the applicant and who live together in the same household and are dependent upon the applicant for all or part of their support.

§ 125.4 Eligibility.

(a) *Allotted Sioux Indians.* The eligibility of allotted Sioux Indians for Sioux benefits is governed by the Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895; the Act of June 10, 1896, c. 398, 29 Stat. 321, 334; and the Act of May 21, 1928, c. 662, 45 Stat. 984. The Act of June 18, 1934, c. 576 § 14, 48 Stat. 987, 25 U.S.C. 474, is inapplicable to any Sioux Indian to whom an allotment of land has been made under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior federal statute. Under the applicable statutes, an allotted Sioux Indian is eligible for Sioux benefits if—

(1) He/she received a valid allotment of land under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior federal statute (regardless of whether such allotment is still held by the applicant);

(2) He/she is either a single person over the age of eighteen (18) years or a head of a family (as provided in § 125.4(c));

(3) He/she has duly made application for Sioux benefits, and such application has been approved during his/her lifetime (as provided in § 125.5); and

(4) He/she has not previously been paid Sioux benefits in his/her own right (as provided in § 125.4(d)).

(b) *Unallotted Sioux Indians.* The Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474, applies only to Sioux Indians who, but for the provisions of section 1 of that Act, 25 U.S.C. 461, would have been eligible for an allotment of land under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior federal statute, and have not, in fact, been allotted lands under the provisions of such federal statutes. That Act has current application only to unallotted members of the Cheyenne River Sioux Tribe because of the proviso that the payment of Sioux benefits under that Act would continue only until such time as the lands available for allotment on each reservation as of June 18, 1934, would have been exhausted by the allotment of eighty (80) acres of land to each person receiving Sioux benefits under that Act. Under this statute a member of the Cheyenne River Sioux Tribe is eligible for Sioux benefits if—

(1) He/she would be eligible, but for the provisions of the Act of June 18, 1934, c. 576, § 1, 48 Stat. 984, 25 U.S.C. 461, for an allotment of land under the provisions of the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, or any prior federal statute, and has not been allotted lands under the provisions of such federal statutes;

(2) He/she is either a single person over the age of eighteen (18) years or a head of a family (as provided in § 125.4(c));

(3) He/she has duly made application for Sioux benefits and such application has been approved during his/her lifetime (as provided in § 125.5);

(4) He/she has not previously been paid Sioux benefits in his/her own right (as provided in § 125.4(d)); and

(5) The hypothetical allotment of 80 acres of tribal land to the applicant would not exhaust the lands available for allotment on the Cheyenne River Indian Reservation as of June 18, 1934, considering the allowance of similar hypothetical allotments to other such Indians previously receiving Sioux benefits under such Act.

(c) *Head of a Family.* The following criteria apply in determining head of family status under both §§ 125.4(a) and 125.4(b).

(1) Except as provided in § 125.4(c)(2), when an applicant for Sioux benefits is married and living with his/her spouse, the applicant will be deemed to be a head of a family if designated as such by both the applicant and his/her spouse.

(2) When an applicant for Sioux benefits is married and living with his/her spouse, but the applicant's spouse (i) does not incur in the applicant's designation as head of the family, or (ii) has previously received Sioux benefits as head of the family which includes the applicant, the applicant will be deemed to be a head of a family if the economic contribution to the support of the family attributable to the applicant exceeds the contribution by his/her spouse for the eighteen (18) months period immediately preceding the date of the application for Sioux benefits.

(3) When an applicant for Sioux benefits is (i) unmarried, or (ii) married, but not living with his/her spouse, the applicant will be deemed to be a head of a family if the primary source of economic contribution to the support of the family is attributable to the applicant. Welfare or support payment made to the applicant by the government or his/her spouse shall be deemed attributable to the applicant.

(4) The Bureau shall not presume that a husband is a head of a family for purposes of this Part solely because of his status as a husband. The Bureau shall not presume that a wife is not a head of a family for purposes of this Part solely because of her status as a wife.

(5) The Bureau shall not presume that a Sioux woman married to a non-Sioux man is a head of a family for purposes of this Part solely because of

such status. The Bureau shall not presume that a Sioux woman married to a Sioux man in not a head of a family for purposes of this Part solely because of such status.

(d) *Double benefits.* The prohibition against multiple payment of Sioux benefits to a person in his/her own right extends to the payment of Sioux benefits under any federal statute. However, a person will not be deemed to have received payment of Sioux benefits in his/her own right due to the fact that:

(1) Sioux benefits were paid to such person in his/her capacity as an heir of an Indian who, under prior law, was held to have a vested right to receive such benefits as of the date of death, or

(2) Sioux benefits have previously been paid to that person's spouse or former spouse. Although the prohibition against double benefits would not preclude both spouses from receiving Sioux benefits during their marriage (assuming they both were otherwise eligible) or preclude a widowed or divorced applicant from receiving Sioux benefits merely because his/her spouse had previously received Sioux benefits, an applicant would not be able to receive Sioux benefits in his/her own right first as a single adult and again as a head of a family, or vice versa.

§ 125.5 Application procedure.

(a) *Agency Superintendent.* Application for Sioux benefits must be submitted to the Agency Superintendent for the reservation and shall contain such information as may be prescribed by the Bureau. Applications must be submitted within the lifetime of the applicant. Within thirty (30) days of receipt of a completed application, the Agency Superintendent shall verify the necessary information and forward the application and relevant documentation to the Area Director along with his/her recommendation for approval or disapproval.

(b) *Area Director.* Within fourteen (14) days of receipt of an application from the Agency Superintendent, the Area Director shall approve or disapprove the application and notify, in writing, the applicant and the Agency

Superintendent of such decision and, if denied, the reasons therefor. Failure of the Area Director to act within the specified time shall have the effect of approval of the application.

(c) *Appeal.* Approval of an application by the Area Director shall be final and conclusive. Disapproval of an application may be appealed to the Commissioner pursuant to the administrative review procedures of 25 CFR Part 2, and the Commissioner's determination shall be subject to the administrative appeal procedures of 43 CFR Part 4, Subpart D. Approval of an application on administrative appeal or pursuant to judicial review shall relate back to the date of the Area Director's decision.

(d) *Prior Applications.*

(1) Eligibility for Sioux Benefits will be determined by an applicant's status as of the date of application, except that where an applicant's application was disapproved prior to the promulgation of these regulations under the provisions of previous Bureau regulations or policies, the applicant may reapply and, if he/she so requests, have his/her eligibility determined based upon his/her status as of the date of such prior application, which shall be deemed to be the date of the application, but nothing in this subsection shall be construed to allow any application to be made on behalf of a deceased Sioux Indian whose prior application was disapproved.

(2) Unallotted Sioux Indians of the Pine Ridge and Rosebud Reservations whose applications were submitted and disapproved prior to the termination of payment of Sioux benefits on each respective reservation may reapply for benefits under this subsection within one year of the effective date of this Part and receive payment if their eligibility under § 125.4(b) is established as of the date of such initial application.

(e) *Information Collection.* The information collection requirements contained in this Part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1076-0004. The information is being collected to provide information necessary for the Bureau to determine eligibility for

Sioux benefits. This information will be used to grant statutory benefits. The obligation to respond is required to obtain a benefit.

[46 FR 38136, July 14, 1981; 46 FR 38074, July 24, 1981. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 125.6 Administration.

(a) No payment of Sioux benefits may be made unless an application therefor has been made and approved during the lifetime of the applicant as provided by federal law.

(b) Payment of Sioux benefits shall be made in accordance with a budget or plan for expenditure submitted by the applicant and approved by the Agency Superintendent.

(c) The Commissioner shall annually compute the commuted monetary value of Sioux benefits to be effective on October 1 of that year and notify the affected tribes and Bureau agencies of such determination.

(d) The Area Director shall annually notify both the Cheyenne River Sioux Tribe and the Commissioner of the number of Sioux benefits remaining available to be paid under the provisions of the Act of June 18, 1934, c. 576, § 14, 48 Stat. 987, 25 U.S.C. 474.

PART 134—PARTIAL PAYMENT CONSTRUCTION CHARGES ON INDIAN IRRIGATION PROJECTS

Sec.

134.1 Partial reimbursement of irrigation charges; 5 percent per annum of cost of system, June 30, 1920.

134.2 Landowners financially unable to pay.

134.3 Period for payments extended.

134.4 Annual payment reduced.

134.4a Assessment and collection of additional construction costs.

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134.7 Modification.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. Interpret or apply sec. 1, 41 Stat. 409; 25 U.S.C. 386.

SOURCE: 22 FR 10643, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 134.1 Partial reimbursement of irrigation charges; 5 percent per annum of cost of system, June 30, 1920.

In pursuance of the act of February 14, 1920 (41 Stat. 409; 25 U.S.C. 386), regulations governing partial payment of construction charges on Indian irrigation projects, with the exception of certain ones mentioned therein, where approved by the Department June 21, 1920, and require that each owner of irrigable land under any irrigation system constructed for the benefit of Indians under provisions of law requiring reimbursement of the cost of such system and to which land, water for irrigation purposes can be delivered from such system, shall pay, on or before November 15, 1920, a sum equal to 5 percent of the per acre cost, as of June 30, 1920, of the construction of the system under which such land is situated. The per acre cost of a given system as of June 30, 1920, shall be determined by dividing the total amount expended for construction purposes on such system up to that day by the total area of land to which water for irrigation purposes can be delivered on that date; and on November 15 of each year following the year 1920, until further notice, the land owners, as therein prescribed, shall pay 5 percent of the per acre construction cost as of June 30, of the current year, such per acre cost to be determined by dividing the cost of the system to June 30 of that year by the total area of land to which water for irrigation purposes can be delivered from the system on that date. Provision is contained that no payments shall be required under the regulations in behalf of lands still in process of allotment or prior to the issuance of the first or trust patent therefor, nor for lands reserved for school, agency, or other administrative purposes where the legal title still remains in the United States.

§ 134.2 Landowners financially unable to pay.

Considerable difficulty has been encountered in collecting charges under the regulations in this part owing to the fact that Indians have been financially unable to pay the charges, the result being that the construction