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OF FEDERAL
REGULATIONS**



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AUTHORITY: §§ 121.1 to 121.52 issued under R. S. 101; 5 U. S. C. 22. Interpret or apply sec. 7, 32 Stat. 275, 34 Stat. 1018, sec. 1, 35 Stat. 444, sec. 1, 36 Stat. 855, as amended, 856, as amended, sec. 17, 40 Stat. 579, 62 Stat. 230; 25 U. S. C. 379, 405, 404, 372, 373, 483. Other statutory provisions interpreted or applied are cited to text in parentheses.

SOURCE: §§ 121.1 to 121.52 appear at 22 F. R. 10560, Dec. 24, 1947.

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, 106, and 102 of this chapter. For regulations pertaining to the determination of heirs and approval of wills, see Part 15 and §§ 11.30-11.32C of this chapter.

PATENTS IN FEE

§ 121.1 Application for patent in fee. Any Indian 21 years of age or over may

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

§ 121.2 Issuance of patents in fee.

(a) The Secretary of the Interior may, in his discretion, and pursuant to the acts of February 8, 1887, as amended (24 Stat. 388, as amended; 25 U. S. C. 349); June 25, 1910, as amended (36 Stat. 855, as amended; 25 U. S. C. 372); and May 14, 1948 (62 Stat. 236; 25 U. S. C. 483) and pursuant to other authorizing acts, issue patents in fee to Indians applying therefor in accordance with § 121.1. A patent in fee will not be issued pursuant to this paragraph unless it appears that the applicant is competent and capable of managing his or her own affairs. Prior to the issuance of a patent in fee pursuant to this paragraph the land shall be appraised at its fair market value. If an application is denied, the applicant shall be so notified in writing.

(b) The Secretary will, pursuant to the act of March 1, 1907 (34 Stat. 1015, 1034), issue a patent in fee to any adult mixed-blood Indian owning land within the White Earth Reservation in the State of Minnesota upon application being made by such Indian, and without regard to the applicant's competency and ability to manage his or her own affairs.

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

CERTIFICATES OF COMPETENCY

§ 121.3 Applications for certificates of competency. Applications on Form 5-106, modified for certificates of competency authorized by section 1 of the act

of June 25, 1910 (36 Stat. 855, 46 Stat. 647; 25 U. S. C. 372), shall be filed with the Indian superintendent having jurisdiction over the land from which the allottee or heirs seek to have all restrictions removed. When the land is not located within the territorial limits of an Indian reservation the allottee or heirs may petition the most convenient superintendent or other officer in charge of an Indian agency or Indian tribe or such other public officer of the United States as may be designated by the Secretary of the Interior, who shall take like action as if the lands were within the territorial limits of an Indian reservation.

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

§ 121.5 Certificates of competency to certain Osage adults. Applications for certificates of competency by adult members of the Osage Tribe of one-half or more Indian blood shall be on the form prescribed by the Secretary of the Interior. Upon the finding by the Secretary or by his duly authorized representative that an applicant who has filed an application on the prescribed form with the superintendent of the Osage Agency is capable of managing his or her own affairs and transacting his or her own business, a certificate of competency may be granted removing the restrictions against alienation of 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.

2 Copies of the form may be obtained from the Superintendent of the Osage Indian Agency, Pawhuska, Okla.

§ 121.6 *Applications for certificates of competency to Kaw or Kansas adults.* Applications for the issuance of certificates of competency to adult members of the Kaw or Kansas Tribe of Indians shall be upon forms prescribed by the Secretary of the Interior and furnished by the superintendent in charge of Kaw or Kansas allottees, Pawnee, Oklahoma.

§ 121.7 *Issuance of certificates of competency.* When the Secretary of the Interior finds that the applicant is capable of transacting his or her own affairs and transacting his or her own business, the restrictions may be removed and a certificate of competency issued, to be effective 30 days from the date of its issuance. The issuance of a certificate of competency is discretionary with the Secretary of the Interior. Such a certificate will not be issued unless it be affirmatively shown that its issuance will not affect unfavorably the consolidation and use by the Indians of restricted Indian lands.

PARTITIONS OF INHERITED ALLOTMENTS

§ 121.8 *Applications for partitions.* In case the trust land of a deceased allottee is susceptible of partition among the heirs, the Secretary of the Interior may make such partition and issue new patents to the several heirs for the portions selected by them. If the allotment is held under a restricted fee title (as distinguished from a trust title) partition may be made by approved deeds among the heirs. Petitions for partition should be made upon Form 5-110.

(Sec. 1, 39 Stat. 127; 25 U. S. C. 378)

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

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

§ 121.9 *Sales and exchanges by Indians.* Pursuant to the acts of May 27, 1902 (32 Stat. 275; 25 U. S. C. 379); March 1, 1907 (34 Stat. 1018; 25 U. S. C. 405); May 29, 1908 (35 Stat. 444; 25 U. S. C. 404); and May 14, 1948 (62 Stat. 236; 25 U. S. C. 483) and pursuant to other authorizing acts, the following classes of land may be sold or exchanged with the approval of the Secretary of the Interior:

(a) Allotted land, and devised and inherited interests therein;

(b) Land acquired by purchase, exchange or gift, and devised and inherited interests therein, held under an instrument of conveyance which recites either that title is in the United States in trust for the Indian or that the land shall not be sold or alienated without the consent or approval of the Superintendent, the Commissioner of Indian Affairs, or the Secretary of the Interior.

§ 121.10 *Sales by the Secretary.* The Secretary of the Interior may, pursuant to the act of June 25, 1910, as amended (36 Stat. 855, as amended; 25 U. S. C. 372), and the act of February 14, 1913 (37 Stat. 678; 25 U. S. C. 373), sell interests in trust allotments acquired by Indians through inheritance or devise.

§ 121.13 *Preference right to purchase lands in Oklahoma.* (a) In the case of any sale of restricted Indian land at public auction or by sealed bids in Oklahoma, except in the case of the Osage Reservation, the act of June 26, 1936 (49 Stat. 1907; 25 U. S. C. 591-599), provides in part that whenever any restricted Indian land or interests in land other than sales or leases of oil, gas, or other minerals therein, are offered for sale, pursuant to the terms of this or any other act of Congress, the Secretary of the Interior shall have a preference right, in his discretion, to purchase the same for or in behalf of any other Indian or Indians of the same or any other tribe, at a fair valuation to be fixed by the appraisement satisfactory to the Indian owner or owners, or if offered for sale at auction said Secretary shall have a preference right, in his discretion, to purchase the same for or in behalf of any other Indian or Indians by meeting the highest bid otherwise offered therefor.

(b) In order to expeditiously carry out these requirements superintendents or other officers in charge of the several Indian agencies and reservations in the State of Oklahoma, except Osage, are required to keep close watch for notice of the sale of restricted Indian land at public auction or through sealed bids. In all cases of this class full cooperation of State and county authorities is desired, and in order to avoid unnecessary delay in exercising the preferential right and in waiving it in cases where the lands are not wanted for Indian purposes, and to avoid undue hardship either to the Indian or to others in the exercise of such preferential right, such cases shall re-

ceive prompt consideration by the several agencies and officers in the field and forwarded to the Bureau of Indian Affairs and the Department to the end that this right to purchase shall be either exercised or waived as promptly as circumstances will permit. Such preference right to purchase is placed in the Secretary of the Interior under the act and is recognized as remaining in full force and effect until released by said Secretary through endorsement on deeds of conveyance or in an appropriate order the form of which is "Preference right of purchase resting in the Secretary of the Interior under section 2' of the act of June 26, 1936 (49 Stat. 1907; 25 U. S. C., Sup. 302, is hereby waived as to the lands herein described."

(Sec. 9, 40 Stat. 1008; 25 U. S. C. 509)

§ 121.14 *Selection of lands under preference right.* Preference right of purchase is not to be construed as indiscriminate land purchasing. Land acquired under this act must be agricultural or grazing of good character and quality. The purchase of town lots or homesteads is not authorized. The superintendent is to exercise this right to purchase in areas where there are Indian settlements and schools available for education of the children, or at other points where desirable lands can be obtained in comparatively consolidated areas for Indian benefit. All lands being considered for purchase must be carefully examined and appraised. The superintendent whenever feasible shall utilize the services of the special land purchasing force and in all instances the land field agent's office must be notified of each such proposed purchase to the end that his record of land acquisition in Oklahoma may be kept current. Where superintendents conduct all the land purchase activities within their jurisdiction all papers are to be transmitted direct to the Commissioner for consideration and appropriate action. In all cases copies of such papers are to be sent to the land field agent. In those cases where the purchase work has been handled by or with the assistance of the land field agent's force, all purchase papers should be routed through the land field agent for preparation of report to the Commissioner.

(Sec. 9, 48 Stat. 1008; 25 U. S. C. 509)

§ 121.15 *Waiver of preference right.* Where restricted lands are offered for

sale which are not within an area wanted for rehabilitation or other Indian purposes and the superintendents in charge are fully satisfied that the tract or tracts offered will not be needed in connection with the land program. Superintendents are hereby authorized to waive such preferential purchase right for and on behalf of the Secretary of the Interior.

(Sec. 9, 40 Stat. 1008; 25 U. S. C. 509)

§ 121.16 *Reinvestment of proceeds in restricted nontaxable land.* Funds derived from the sale of restricted lands may be used to acquire other lands as provided for by the act of March 2, 1931, as amended by the act of June 30, 1932 (47 Stat. 474). The lands so acquired shall be restricted and nontaxable as provided in said act.

(49 Stat. 1471, as amended; 25 U. S. C. 409a)

METHOD OF SALES

§ 121.17 *Petitions for the sale of land.* Petitions for the sale of trust or restricted land shall be filed, on forms approved by the Commissioner of Indian Affairs, with the Superintendent or other officer in charge of the Indian Agency or other local facility having administrative jurisdiction over the land.

§ 121.21 *Costs of conveyances; payment.* Purchasers shall pay all costs of conveyancing and in addition the following sums, to wit: If the purchase price is \$1,000 or less, \$1.50. If it be more than \$1,000 and not more than \$2,000, \$2. If the purchase price is more than \$2,000, \$2.50. Such fees should not be included in checks covering payment for the land, but collected separately, taken into accounts as "Sundry receipts" and deposited to the credit of the United States.

(Sec. 1, 41 Stat. 415, as amended; 25 U. S. C. 413)

§ 121.22 *Additional sale fee required.* In all cases the sale of restricted allotted Indian lands, either on a cash basis or on deferred payments, the purchasers will be required to deposit with the superintendent, in addition to the consideration for the land and fee provided for in § 121.21, the sum of \$20, such amount to be paid when the purchaser is notified that he is the successful bidder. This fee is collected for the purpose of paying for the work incident to the sale as required by the act of February 14, 1920, as amended by the act of March 1, 1933 (47 Stat. 1417; 25 U. S. C. 413). The fee may be reduced to a lesser amount than \$20

or to a nominal amount if the circumstances justify such reduction in the discretion of the Secretary of the Interior. The sales fee if conditions warrant may be deducted from the proceeds of sale.

(Sec. 1, 41 Stat. 416, as amended, 25 U. S. C. 413)

§ 121.23 *Irrigation fees; payment.* In sales involving irrigable land, the purchaser will be required to pay the proportionate per acre construction cost of the particular project to be assessed against the land. Payments made by the Indian owner prior to July 1, 1932 shall be taken into consideration in fixing the appraisements of the land. All appraisements covering irrigable land will be submitted to the supervising or project engineer of the district in which such land is situated for his approval. Purchasers will be required to pay in addition to the per acre construction cost the annual operation and maintenance charges assessed against the land which will be based on the annual cost of the operation of the system. All such charges, remaining unpaid as of the date of the acceptance of the bid, must be paid by the purchaser. In all cases purchasers will be required to enter into an agreement for the payment of all such charges. A lien clause covering the cost of all irrigation charges, past and future, will be inserted in the patent or other instrument issued to the purchaser.

CROSS REFERENCES: For regulations pertaining to construction costs, see Parts 211, 214, 215 of this chapter. For additional regulations pertaining to the payment of fees and charges in connection with the sale of irrigable lands, see Parts 129, 128, and § 211.4 of this chapter.

§ 121.24 *Appraisal, advertisement, consideration.* (a) Prior to making or approving a sale, exchange or gift of trust or restricted land, an appraisal shall be made indicating the fair market value of such land.

(b) Except as provided in paragraph (c) of this section, proposed sales of land shall be advertised for at least 30 days prior to the proposed date for opening bids on such land, unless a shorter period is otherwise authorized by the Secretary of the Interior. At the request of the owner, the advertisement may afford to the tribe occupying the reservation where the land is located, to members of such tribe, or to any reasonably defined class of Indians, a right to meet the high bid.

(c) The following types of conveyances need not be advertised and may be negotiated: (1) A sale to another Indian, an Indian tribe, the United States or an agency thereof, or a state or local government or agency thereof; (2) a conveyance to a member of the Indian's immediate family pursuant to the provisions of paragraph (d) of this section; (3) a sale to a non-Indian, when the Secretary determines that it is impractical to advertise; (4) an exchange; (5) temporary easements for rights of way not to exceed fifty years. Except as provided in paragraph (d) of this section, the consideration for a negotiated sale shall be not less than the appraised value of the land. The consideration for an exchange shall be either land, or a combination of land and money or other thing of value, the fair market value of which is not less than the appraised value of the trust or restricted land. Sales between Indians, either of whom is an employee of the United States Government, are governed by the provisions of § 251.5 of this chapter.

(d) An Indian owner of trust or restricted land may, with the approval of the Secretary, convey land to a member of his or her immediate family for a consideration less than that prescribed in paragraph (c) of this section or for no consideration. For purposes of this section, "immediate family" is defined as the Indian's spouse, brothers and sisters, lineal ancestors of Indian blood, and lineal descendants.

§ 121.25 *Bids; how made.* Each bid on Indian lands offered for sale must be accompanied by a duly certified check payable to the order of the superintendent or other officer in charge for the use of the vendor, for not less than 10 percent of the offer made, as a guaranty of the bidder's faithful performance of his proposition. If the bid is accepted and the successful bidder shall within 30 days after due notice fail to comply with the terms of his bid, his defeat shall be forfeited to the use of the owner of the land. All bids should be enclosed in a sealed envelope which must be marked by the bidder "Bid for Indian Land" and show the date of opening, but the description of the land shall not be noted on the envelope.

§ 121.26 *Number of bids.* No bidder will be permitted to include more than

one item in any single bid. If a bidder desires to bid on more than one item, he must bid a separate amount for each item.

§ 121.27 *Bidding, not open to employees.* Except as authorized by the provisions of § 251.5 of this chapter, no employee of the Bureau of Indian Affairs shall directly or indirectly bid, or make or prepare any bid, or assist any bidder in preparing his bid.

§ 121.28 *Bids; right to reject.* The right to reject any and all bids is reserved to the Commissioner of Indian Affairs.

§ 121.29 *Bidders, right to be present when bids are opened.* Bidders, owners and other interested persons may be present when bids are opened and when so opened the bids shall be recorded in a book or on cards kept for that purpose so as to show the name of the bidder, description of the land, amount offered, and action taken thereon. The award shall be made to the highest bidder and the checks of the unsuccessful bidders shall be returned immediately to them, receipts therefor being taken and filed at the agency.

§ 121.30 *Exchange submitted with bids; disposal.* The exchange submitted with the bid of the successful bidder shall be immediately deposited by the superintendent or other officer in charge to his official credit in a designated depository for individual Indian money. As soon as practicable the superintendent or other officer in charge shall require the successful bidder to furnish additional exchange for the remaining 90 percent of the amount bid, which shall be deposited forthwith to the official credit of the disbursing officer in the same depository to await the action of the Department on the sale.

§ 121.31 *Deferred payment sales.* When the Indian owner and purchaser desire, a sale may be made or approved on the deferred payment plan. If the purchaser, whether Indian or non-Indian, is to take title in a non-trust and unrestricted status, the purchaser shall pay not less than 25 percent of the purchase price in advance, and shall execute notes for the balance payable in three equal payments on or before 1, 2, and 3 years after date, on Form 5-110g. If the purchaser is an individual Indian or Indian tribe, and if the purchaser is to take title in a trust or restricted status, the purchaser shall pay not less

than 10 percent of the purchase price in advance; terms for the payment of remaining installments are within the discretion of the Secretary of the Interior. 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.

REMOVAL OF RESTRICTIONS AND SALE OF LANDS, FIVE CIVILIZED TRIBES AND RE-INVESTMENT OF FUNDS IN NONTAKABLE LANDS

§ 121.34 *Removal of restrictions, application.* Application for the removal of restrictions and for approval of sales of lands must be made in triplicate on approved form Five Civilized Tribes, 5-484, and submitted to the superintendent for the Five Civilized Tribes or any field clerk. These forms will be furnished free of charge by the superintendent or field clerk.

§ 121.35 *Removal of restriction, unconditionally.* Upon proper showing to the Secretary of the Interior that an applicant for the removal of restrictions should have the unrestricted control of his allotment or a part thereof, he may remove the restrictions therefrom.

§ 121.36 *Removal of restrictions, conditionally.* When the Secretary of the Interior finds it to be for the best interest of any applicant that all or part of his restricted lands should be sold with conditions concerning terms of sale and disposal of the proceeds, he may remove the restrictions, to become effective only and simultaneously with the execution of a deed by said applicant and issue an order specifically providing the terms under which the land may be sold and providing for the disposal of the proceeds.

§ 121.37 *Advertising lands for sale.* The superintendent for the Five Civilized Tribes will advertise for sale at public auction for not less than 30 days the land included in conditional removal of restrictions orders by posting notices at his office; at the offices of the several field clerks, and at the county court houses of the Five Civilized Tribes area. Such notices shall contain information as to time and place of sale, legal description of the land, information as to character of land, minimum price at which the land may be sold, and terms of sale with reservation of right to reject any bid submitted. The determination of the

minimum price at which lands may be sold will be made by the superintendent after an inspection and appraisal of the land by a representative of his office. No bid for an amount less than the minimum price will be considered. All cost of conveyance and recording shall be at the expense of the purchaser.

§ 121.38 *Bids; how made and accepted.* Bids may be made in writing on any of the lands to be offered for sale. Any written bid submitted to be given consideration must be received at the place of sale prior to the hour of sale by the officer named in the notice offering the land for sale and accompanied by a deposit of 10 percent of the amount bid. Deposits accompanying unsuccessful bids will be returned promptly. Each successful oral bid must be accompanied by a deposit of 10 percent of the amount bid as guaranty of faithful compliance of the bidder with the terms of sale.

§ 121.39 *Fees and consideration for sale; acceptance and deposit.* (a) A remittance of \$20 will be required from the successful bidder as a land sale fee on each tract sold. This fee is collected for the purpose of paying for the work incident to the sale as required by the act of February 14, 1920, as amended by the act of March 1, 1933 (47 Stat. 1417; 25 U. S. C. 413). Where the circumstances justify a reduction in the sales fee the Secretary of the Interior may reduce the amount. The sales fee if conditions warrant and the advertisement so provides may be deducted from the proceeds of the sale.

(b) If a bid is accepted and the successful bidder shall fail within 10 days from the receipt of notice of the acceptance of his bid to comply with the terms thereof, such deposit will be subject to forfeiture by the superintendent for the Five Civilized Tribes for the use of the owner of the land.

(c) The proceeds of all such sales shall be held by said superintendent for the Five Civilized Tribes in his official capacity, and be disbursed for the benefit of the respective Indians.

(Sec. 1, 41 Stat. 416, as amended; 25 U. S. C. 413)

§ 121.40 *Deferred payment sales; how made.* Upon the approval by the Secretary of the Interior of a conditional order for the removal of restrictions the land covered thereby to be sold under the supervision of the superintendent for the

Five Civilized Tribes, the said superintendent is hereby authorized, in such cases as he considers to be for the best interests of the respective allottees so to do, to advertise and sell said land at public auction for not less than the appraised value for cash or upon deferred payments, any such deferred payment sales to be made under the following terms:

(a) Where the consideration is \$500 or less, at least one-half to be paid in cash at the time of the sale and the remainder to be evidenced by purchasers' notes due and payable in not more than 12 months after the date of purchase and secured by first mortgage on the premises conveyed.

(b) Where the consideration exceeds \$500 and is not more than \$1,500, at least one-third to be paid in cash at the time of sale and the remainder in two equal payments evidenced by the purchaser's note or notes to fall due not more than 2½ years from date of purchase, and secured by first mortgage on the premises conveyed.

(c) Where the consideration exceeds \$1,500 at least one-fourth to be paid in cash at the time of sale and the remainder in three equal payments evidenced by purchaser's note or notes to fall due not more than 3½ years from the date of purchase and secured by first mortgage on the premises conveyed.

§ 121.41 *Cash payments; how accounted.* All cash payments at the time of sale to be paid into the hands of the cashier and special disbursing agent for the Five Civilized Tribes, Muskogee, Oklahoma, or his successor in authority, and all notes and mortgages securing same to contain the express condition that no payment purporting to discharge, satisfy, or release the indebtedness evidenced thereby shall operate as a release, satisfaction, discharge, or payment thereof unless such payments and interest accruing thereon are made to the said cashier or his successor, for the benefit of the proper allottees, or if such note or notes are properly negotiated with the approval of the Secretary of the Interior, to the owner or owners of such notes, and such notes shall be non-negotiable except with the approval of the said Secretary. The note or notes shall be held by the said cashier or his successor for collection when due. Said notes shall draw interest from date of execution until paid at the rate of 6 percent per annum.

§ 121.42 *Deferred payments; how accounted.* All moneys received by the cashier or his successor as consideration for land, including moneys received on account of deferred payments and accrued interest thereon, shall be deposited or held to the credit of the proper allottee in individual Indian accounts and be subject to the rules, regulations and orders of this Department governing the holding of moneys so deposited and the disbursement thereof.

CROSS REFERENCES: For individual Indian money regulations, see Part 104 of this chapter. For deposit of Indian funds in banks, see Part 106 of this chapter.

§ 121.43 *Consummation of sale.* Upon the consummation of a sale in compliance with the regulations in this part the superintendent, or other officer in charge of the office of the Five Civilized Tribes, will make appropriate endorsements upon the order for the removal of restrictions from the land sold and on the deed of conveyance as prescribed by Forms Five Civilized Tribes 5-640 and 5-1830. The order for the removal of restrictions and the deed thus endorsed shall, after proper record thereof has been made at the office of the said superintendent, be delivered to the grantee.

§ 121.44 *Reinvestment of funds in restricted nontaxable land.* In any case where lands are purchased for the use and benefit of any citizen of the Five Civilized Tribes of the restricted class, payment for which is made from proceeds arising from the sale of restricted nontaxable land, the said superintendent shall cause conveyance of such lands to be made on form of conveyance containing an habendum clause against alienation, taxation, or encumbrances, as follows:

TO HAVE AND TO HOLD said described premises, unto said grantee heirs and assigns, forever, free, clear, and discharged of all former grants, charges, taxes, judgments, mortgages, and other liens and encumbrances of whatsoever nature, subject to the condition that no lease deed, mortgage, power of attorney, contract to sell, or other instrument affecting the land herein described or the title thereto shall be of any force and effect, unless approved by the Secretary of the Interior or the restrictions from said land are otherwise removed by operation of law.

For further information regarding forms see § 121.34.

§ 121.45 *Superintendent's certificate on deed.* Before delivery and recording of such deed of conveyance the said superintendent will attach a certificate of notice in the following form:

I hereby certify that the land described in the above deed was purchased for a home for the said _____ with funds HELD IN TRUST by the United States for _____ derived from the sale of restricted lands as authorized by the terms of the act of March 2, 1933 (46 Stat. 1471) as amended June 30, 1932 (47 Stat. 474), and is nontaxable as therein provided.

Superintendent for the Five Civilized Tribes.

§ 121.46 *Purchase of restricted; nontaxable personal property with restricted funds.* In all cases where purchases of automobiles, horses, wagons, bugries, cattle, agricultural implements, or other personal property are made for individual Indians, payments for which are made from moneys received from the sale of restricted allotted lands, or from other moneys held under the control of the Department of the Interior, the superintendent, for the Five Civilized Tribes will, when in his judgment it is to the Indian's best interest, cause a bill of sale to be executed by the vendor or vendors conveying the property purchased to the United States, to be held in trust for the use and benefit of the respective allottees or their heirs who are of the restricted class.

§ 121.47 *Identification USIS.* (a) The superintendent for the Five Civilized Tribes may cause all such property to be branded on some prominent place, "USIS" to indicate that the property was purchased by the United States through the Indian service.

(b) The law of the State of Oklahoma shall be followed in taking bills of sale.

The bill of sale should be filed at the office of the county clerk for the county in which the property is located and duplicate thereof retained in the office of the superintendent for the Five Civilized Tribes.

(c) Before filing the bill of sale, certificate of notice shall be indorsed thereon by the said superintendent or such other officer of the Department as he may designate for the purpose, evidencing the official character of the transaction and the nature of the funds affected.

§ 121.48 *Alienation of property covered by bill of sale; invalid unless previously authorized.* No sale, mortgage, or other disposition of the property covered by a bill of sale, as provided in the regulations in this part, shall be of any force or validity except with the written consent previously obtained and the approval subsequently given of the superintendent for the Five Civilized Tribes, or such other officer as he may designate for the purpose; and in the event the Indian attempts to sell, mortgage, or otherwise dispose of such property the said superintendent shall promptly notify the Department to that effect, forwarding the original bill of sale, in order that proper proceedings may be instituted for the recovery of the property.

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

§ 121.49. *Procedure for removing restrictions.* An Indian may apply for the removal of restrictions from land acquired by purchase, exchange or gift, and devised and inherited interests therein, held under an instrument of conveyance which recites that the land shall not be sold or alienated without the consent or approval of the Superintendent, the Commissioner of Indian Affairs, or the Secretary of the Interior. An application for the removal of restrictions from such land shall be filed with the superintendent or other officer in charge of the Indian agency or other local facility having administrative jurisdiction over the land. The application shall set forth the experience the applicant has had in the transaction of his business affairs and the reasons why a removal of restrictions is desired. If it appears that the applicant is competent and capable of managing his affairs or that the removal of restrictions is otherwise in the best interests of the applicant, an order removing restrictions against alienation of the land may be issued. Prior to the issuance of such an order the land shall be appraised at its fair market value.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

§ 121.52 *Approval of mortgages and deeds of trust.* The Commissioner of Indian Affairs or his authorized representative may approve mortgages or deeds of trust on any individually owned

trust or restricted land whenever such lands under any law or treaty may be sold with the approval of the Secretary of the Interior or his duly authorized representative. The approval of such a mortgage or deed of trust terminates the trust or restricted status of the land only with respect to such mortgage or deed of trust and only for the purpose of permitting foreclosure or sale pursuant to the terms of the mortgage or deed of trust in accordance with the laws of the State or Territory in which the land is situated.

Part 122—Determination of Competency: Crow Indians.

- Sec. 122.1 Purpose of regulations.
- 122.2 Application and examination.
- 122.3 Application form.
- 122.4 Factors determining competency.
- 122.5 Children of competent Indians.
- 122.6 Appeals.

Authority: §§ 122.1 to 122.6 issued under sec. 14, 51 Stat. 755, 49 Stat. 1495, as amended. Source: §§ 122.1 to 122.6 appear at 22 F. R. 10663, Dec. 24, 1957.

§ 122.1 *Purpose of regulations.* The regulations in this part govern the procedures in determining the competency of Crow Indians under Public Law 303, 81st Congress, approved September 8, 1949.

§ 122.2 *Application and examination.* The Commissioner of Indian Affairs or his duly authorized representative, upon the application of any unenrolled adult member of the Crow Tribe, shall classify him by placing his name to the competent or incompetent rolls established pursuant to the act of June 4, 1920 (41 Stat. 751), and upon application shall determine whether those persons whose names now or hereafter appear on the incompetent roll shall be reclassified as competent and their names placed on the competent roll.

§ 122.3 *Application form.* The application form shall include, among other things: (a) The name of the applicant; (b) his age, residence, degree of Indian blood, and education; (c) his experience in farming, cattle raising, business, or other occupation (including home-making); (d) his present occupation, if any; (e) a statement concerning the applicant's financial status, including his average earned and unearned income

for the last two years from restricted leases and from other sources, and his outstanding indebtedness to the United States, to the tribe, or to others; (f) a description of his property and its value, including his allotted and inherited lands; and (g) the name of the applicant's spouse, if any, and the names of his minor children, if any, and their ages, together with a statement regarding the land, allotted and inherited, held by each.

§ 122.4 *Factors determining competency.* Among the matters to be considered by the Commissioner of Indian Affairs in determining competency are the amount of the applicant's indebtedness to the tribe, to the United States Government, and to others; whether he is a public charge or a charge on friends and relatives, or will become such a charge, by reason of being classed as competent; and whether the applicant has demonstrated that he possesses the ability to take care of himself and his property, to protect the interests of himself and his family, to lease his land and collect the rentals therefrom, to lease the land of his minor children, to prescribe in lease agreements those provisions which will protect the land from deterioration through over-grazing and other improper practices, and to assume full responsibility for obtaining compliance with the terms of any lease.

§ 122.5 *Children of competent Indians.* Children of competent Indians who have attained or upon attaining their majority shall automatically become competent except any such Indian who is declared incompetent by a court of competent jurisdiction or who is incompetent under the laws of the State within which he resides.

§ 122.6 *Appeals.* An appeal to the Secretary of the Interior may be made within 30 days from the date of notice to the applicant of the decision of the Commissioner of Indian Affairs.

Part 123—Osage Roll, Certificate of Competency

- Sec. 123.1 Definitions.
- 123.2 Preparation of competency roll.
- 123.3 Determination of age and quantum of Indian blood.
- 123.4 Notification, disagreement and decision.
- 123.5 Issuance of certificate of competency.

Sec. 123.6 Costs of recording certificates of competency.

123.7 Delivery of cash and securities.

Authority: §§ 123.1 to 123.7 issued under 62 Stat. 18; 26 U. S. C. 331 note.

Source: §§ 123.1 to 123.7 appear at 22 F. R. 10663, Dec. 24, 1957.

§ 123.1 *Definitions.* When used in the regulations in this part the following words or terms shall have the meaning shown below:

- (a) "Secretary" means the Secretary of the Interior.
- (b) "Commissioner" means the Commissioner of Indian Affairs.
- (c) "Superintendent" means the superintendent of the Osage Agency.
- (d) "Person" means an unallotted member of the Osage Tribe of less than one-half Indian blood who has not received a certificate of competency.

§ 123.2 *Preparation of competency roll.* The superintendent shall cause a roll to be compiled of all persons who have attained the age of 21 years, and shall add thereto the names of minors as they attain the age of 21 years. The roll shall include the names, last known address, date of birth, and the total quantum of Osage blood and non-Osage Indian blood of each person listed thereon.

§ 123.3 *Determination of age and quantum of Indian blood.* (a) The date of birth as shown by the census records of the Osage Agency shall be accepted as prima facie evidence in determining the age of a person.

(b) The total quantum of Indian blood of a person shall be computed and determined as follows:

(1) When the parents of a person are enrolled members, or when one parent is an enrolled member and the other parent is a descendant of an enrolled member, or when both parents are descendants of enrolled members, or when one parent is an enrolled member of descendant of an enrolled member of the Osage Tribe, and the other parent is of non-Indian blood, the Osage Agency register of Indian families for the year ending December 31, 1901, shall be accepted as prima facie evidence of the quantum of Indian blood.

(2) When one parent of a person is an enrolled member, or the descendant of an enrolled member of the Osage Tribe,