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CUMULATIVE POCKET SUPPLEMENT

**TO THE . . . CODE
OF FEDERAL
REGULATIONS**

Title 25—Indians

**AS OF
JANUARY 1
1959**

**For changes on and after
January 1, 1959, see the daily issues of the Federal Register**

Such finding shall be recorded and filed with the records of the account.

Cross Reference: For rules governing the payment of judgments from individual Indian money accounts, see § 11.20 of this chapter.

§ 104.10 *Funds of deceased Indians other than the Five Civilized Tribes.* Funds of a deceased Indian other than those of the Five Civilized Tribes may be disbursed (a) for the payment of obligations previously authorized, including authorized expenses of last illness; (b) for authorized funeral expenses; (c) for support of dependent members of the family of decedent in such amounts deemed necessary to avoid hardship and consistent with the value of the estate and the interest of probable heirs; (d) for necessary expenses to conserve the estate pending the completion of probate proceedings; and (e) for probate fees and claims allowed pursuant to Part 16 of this chapter.

§ 104.11 *Funds of deceased Indians of the Five Civilized Tribes.* Funds of a

deceased Indian of the Five Civilized Tribes may be disbursed to pay ad valorem and personal property taxes, Federal and State estate and income taxes, obligations approved by the Secretary or his authorized representative prior to death of decedent, expenses of last sickness and burial and claims found to be just and reasonable which are not barred by the statute of limitations, costs of determining heirs to restricted property by the State courts, and claims allowed pursuant to Part 16 of this chapter.

§ 104.12 *Appeals.* Appeal from an action taken by a Superintendent or other officer in charge of an Indian agency or reservation may be taken within 30 days of notification of the action to the Area Director in charge of an area office of the Bureau of Indian Affairs. An appeal from an action of an Area Director may be taken within 30 days to the Commissioner of Indian Affairs. An appeal from an action of the Commissioner may be taken within 30 days to the Secretary of the Interior.

money and property that is held in trust for him or that is held subject to a restriction against alienation imposed by the United States, issuing, 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 become effective shall be preserved as provided in section 2 (d) of the act of August 11, 1955. The effect of such order also shall be to terminate the Indian's eligibility for all special services provided for him by the Department of the Interior because of his status as an Indian, except in cases (a) where it is determined by the Secretary, or his authorized representative, that the termination of eligibility because of such order will result in substantial hardship for the Indian, and (b) where the Secretary, or his authorized representative, is directed by law to provide such special services for the Indian, and if he inherits or there is devised to him interests in trust or restricted property, subsequent to the effective date of the order, the property will be acquired without restrictions. Any existing exemption from taxation that constitutes a vested property right shall continue in force and effect until it terminates by virtue of its own limitations.

if any, his family has been dependent on the income from trust or restricted property.

(c) The assets, including land and improvements, farm equipment, livestock, etc., he, or his family has; the property, real or personal, he has acquired through his own efforts.

(d) The manner in which he has used assets and funds coming into his possession, whether through earnings, inheritance or otherwise.

(e) The state of his health and physical capacities, insofar as they affect his ability to manage his own affairs.

(f) The value of his property in relation to his demonstrated degree of ability to manage his own affairs.

§ 121.54 *Notice of intent to issue order.* Prior to the issuance of an order removing restrictions the Indian will be notified in writing that:

(a) Section 2 (b) of the act of August 11, 1955 (69 Stat. 666), directs the Secretary of the Interior to issue an order removing restrictions to any Indian of the Five Civilized Tribes who, in the judgment of the Secretary, has sufficient ability, knowledge, experience, and judgment to enable him to manage his business affairs, including the administration, use, investment, and disposition of any property turned over to such person 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.

(b) He has been determined tentatively to be in the category defined by the statute; and an order removing restrictions will be issued 60 days after the date of the notice, unless he or someone acting in his behalf, presents persuasive reasons for not issuing the order. Such reasons should be in writing and received in the office issuing the notice before the end of the 60-day period.

§ 121.55 *Issuance of order.* (a) If no objection is filed, as permitted by § 121.54 (b), the order shall be issued at the end of the 60-day period, and the Indian and the Board of County Commissioners for the county in which the Indian resides shall be so notified. The order shall become effective six months after the date of such notice, unless set aside by order of a county court. The timely initiation of proceedings before a

§ 121.53 *Factors to be considered.* Prior to the issuance of an order removing restrictions, all or part of the following factors, as appropriate, shall be considered in arriving at a decision, and any other factors that may be pertinent:

(a) The extent of the Indian's education and the nature of his training and experience, including business experience, and the manner in which he has demonstrated his ability to manage his own affairs without assistance or supervision.

(b) The extent to which he has made an adequate living for himself and family; the extent to which he has required assistance from the Government, tribe, or other agency or organization in the matter of loans, relief, old-age assistance, aid to dependent children, unemployment compensation, old-age and survivors insurance, etc.; and the extent,

SUBCHAPTERS K—O—LANDS; SURFACE ESTATES AND RESOURCES

SUBCHAPTER K—PATENTS, ALLOTMENTS AND SALES

Part 121—Issuance of Patents in Fee, Certificates of Competency, Sale of Certain Indian Lands, and Reinvestment of Proceeds

SOURCE: §§ 121.51 to 121.57 appear at 29 F.R. 6494, Aug. 22, 1958.

NOTE: Former § 121.52 was redesignated § 121.61.

§ 121.51 *Removal of restrictions.* Upon a determination by the Secretary of the Interior that an adult Indian of the Five Civilized Tribes owning trust or restricted property possesses sufficient ability, knowledge, experience, and judgment to enable him to manage his business affairs, including the administration, use, investment, and disposition of any property turned over to such person 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, the Secretary or his authorized representative shall issue, without application therefor by the Indian affected, an order removing restrictions.

§ 121.52 *Effect of order.* When an order becomes effective, the Secretary shall cause to be turned over to the Indian full ownership and control of any

REMOVAL OF RESTRICTIONS, FIVE CIVILIZED TRIBES [ADDED]

- Sec. 121.51 Removal of restrictions.
- 121.52 Effect of order.
- 121.53 Factors to be considered.
- 121.54 Notice of intent to issue order.
- 121.55 Issuance of order.
- 121.56 Appeals from decision to issue order.
- 121.57 Judicial review.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

- 121.61 Approval of mortgages and deeds of trust. [Redesignated; revised]

REMOVAL OF RESTRICTIONS, FIVE CIVILIZED TRIBES [ADDED]

AUTHORITY: §§ 121.51 to 121.57 issued under R. S. 161; 5 U. S. C. 23. Interpret or apply sec. 2, 40 Stat. 600, 69 Stat. 688; 25 U. S. C. 355.

county court shall stay the effective date of an order until the proceedings are concluded.

(b) If an Indian, or someone acting in his behalf, submits within the 60-day period allowed for that purpose, reasons for not issuing the order, and it is determined the reasons are not persuasive, the Indian and any person acting in his behalf shall be notified in writing that the order will be issued, notwithstanding the objections, 30 days after the date of such notification. The notification shall allow a right of appeal to the Secretary of the Interior within the 30-day period.

§ 121.56 *Appeals from decision to issue order.* An appeal to the Secretary, together with supporting data, must be transmitted to the officer issuing the notice of the proposed removal of restrictions, and must be received by such officer before the expiration of the 30-day period mentioned in § 121.55 (b). Issuance of the order removing restrictions shall be withheld until the appeal is decided. If no appeal is received by the end of the 30-day period allowed for appeals, or if an appeal is dismissed, the order removing restrictions shall be issued, and the Indian and the Board of County Commissioners for the county in which the Indian resides shall be so notified. The order shall become effective six months after the date of such notice, unless set aside by order of a county court. The timely initiation of proceedings before a county court shall stay the effective date of an order until the proceedings are concluded.

§ 121.57 *Judicial review.* When an order removing restrictions is issued, copies thereof shall be delivered to the Indian, and to any person acting in his behalf, and to the Board of County Commissioners for the county in which the Indian resides, with the notification that, under the terms of the act of August 11, 1955 (69 Stat. 866), the Indian or the Board of County Commissioners has the right, within six months from the date of the notice of the order, to apply to the county court for the county in which the Indian resides for an order setting aside the order removing restric-

tions. The timely initiation of such proceedings shall stay the effective date of the order until the proceedings are concluded.

MORTGAGES AND DEEDS OF TRUST TO SECURE LOANS TO INDIANS

§ 121.61 *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.

(R. S. 161; 5 U. S. C. 22. Interprets or applies sec. 7, 32 Stat. 275, 34 Stat. 1018, sec. 1, 35 Stat. 444, secs. 1, 2, 36 Stat. 866, as amended, 866, as amended, sec. 17, 40 Stat. 579, 62 Stat. 236; 25 U. S. C. 379, 405, 404, 372, 373, 483).

COBIFICATION: Former § 121.52 was redesignated § 121.61 and revised, 23 F. R. 6494, Aug. 22, 1958.

Part 130—Allotment of Lands on the Torres-Martinez Indian Reservation, California [Added]

- Sec. 130.1 Purpose.
130.2 Scope.
130.3 Size of allotments.
130.4 Description of allotments.
130.5 Method of selection.
130.6 Notice of allotment.
130.7 Priority of owners of improvements.
130.8 Priority of previous selectees.
130.9 Priority of selecting remaining lands available for allotment.
130.10 Disposition of improvements.
130.11 Submittal of allotment schedule.
130.12 Issuance of trust patents.
130.13 Special instructions.

AUTHORITY: §§ 130.1 to 130.13 issued under sec. 10, 64 Stat. 472.

SOURCE: §§ 130.1 to 130.13 appear at 23 F. R. 1021, Mar. 22, 1958.

§ 130.1 *Purpose.* The rules and regulations in this part will govern the preparation of allotment schedules containing the names and allotment selections of the unallotted members, hereinafter called members, of the Torres-Martinez Band of Mission Indians of the Torres-Martinez Indian Reservation.

§ 130.2 *Scope.* The rules and regulations in this part shall apply to those Indians whose names appear on the official enrollment records of the Torres-Martinez Band of Mission Indians as of June 30, 1949, approved by the Secretary of the Interior, who have not heretofore received allotments.

§ 130.3 *Size of allotments.* Each member shall be entitled to an allotment of not to exceed 40 acres of land classed as irrigable or potentially irrigable and available for allotment by the Secretary of the Interior.

§ 130.4 *Description of allotments.* Each allotment selection must be described by legal subdivision or aliquot part thereof based upon public land surveys made by the Department of the Interior and wherever possible must consist of a single tract or contiguous tracts of land.

§ 130.5 *Method of selection.* The Area Director, Sacramento Area Office, or his representative, shall be available during the periods specified in this part, at an office of the Bureau of Indian Affairs located in the proximity of the Torres-Martinez Reservation to assist the Indians in making allotment selections. A map of the reservation on which is shown the irrigable and potentially irrigable land which may be allotted, shall be available in such office during regular business hours for use in making the allotment selections. Each adult member shall select his allotment from tribal land available for allotment. Selections for minors shall be made by one of the parents or by the Area Director's authorized representative should the parents refuse or fail to make a selection. Selections for orphan members or members who are under legal disability shall be made by the Area Director's authorized representative. Members who are not able to appear personally and sign the required forms for their selection, may

in writing appoint a representative to make the allotment selection, provided the appointment is duly acknowledged before a notary public or other officer authorized to take acknowledgments. Appropriate forms for making selections shall be furnished by the Area Director.

§ 130.6 *Notice of allotment.* The Area Director shall mail a copy of the rules and regulations in this part, together with a letter entitled "Notice of Allotment" bearing the date it is posted, by registered mail to each member eligible for an allotment to the member's last known address. The letter shall inform each member of the place and the period of time when allotment selections will be accepted. In addition, copies of the rules and regulations in this part, together with copies of the Area Director's letter, shall be posted at several conspicuous places on and in the vicinity of the reservation.

§ 130.7 *Priority of owners of improvements.* Priority in the selection of land, upon which there are improvements, will be given to those members who own the improvements, provided such improvements were placed thereon prior to July 1, 1954. The lands classed as improved tracts will be designated on the map used for allotting purposes by the Area Director. The owner of the improvements on the land shall file on such land for allotment selection within a period of 15 days from the date of the "Notice of Allotment". Failure of such member to take the required action within the specified time will constitute a forfeiture of this priority right.

§ 130.8 *Priority of previous selectees.* Priority in the selection of subjugated or unsubjugated land which has not been selected in accordance with § 130.7 will be given to those members who submit documentary evidence to show that a bona fide selection was made prior to August 25, 1950, the date of the act above cited. Acceptable proof must be in the form of an official letter or other document of acknowledgment from the Bureau of Indian Affairs. Members claiming priority rights as previous selectees will be given from the 15th day to the 45th day from the date of the "Notice of Allotment" for filing accept-