CODE OF FEDERAL REGULATIONS

TITLE 25

Revised as of January 1, 1958

CONTAINING A CODIFICATION OF DOCUMENTS OF GENERAL APPLICABILITY AND FUTURE EFFECT AS OF JANUARY 1, 1958

With Ancillaries and Index

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interest, and prescribe a time limit within which such action shall be taken. If the board fails to take such action within the period prescribed, the case shall be reported to the business committee. The business committee may direct the board in writing to take the action which it deems necessary to protect the loan. In the event the board fails to take such action within 10 days after receipt of the business committee's directive, the business committee may take any action which the board could have taken.

§ 93.20 *Authority of general council.* (a) The functions of the business committee as set forth in the regulations in this part may be exercised in whole or in part by the Klamath General Council. The Klamath General Council may, by resolution, authorize a special committee composed of not less than seven adult enrolled members of the tr[illegible] exercise the functions of the bu[illegible] committee as set forth in the regulations in this part. If the Klamath Tribes adopt a constitution and bylaws approved by the Secretary of the Interior or his authorized representative, the general council may, by resolution, authorize the governing body of the Klamath Tribes to exercise the functions of the business committee as set forth in the regulations in this part.

(b) The general council [illegible]ay countermand any instructions [illegible] or taken by the business co[illegible] a special committee, or the gov[illegible] body of the Klamath Tribes, under the regulations in this part, provided that any action taken by either the board or the superintendent acting under authority from the business committee, a special committee, or the governing body of the Klamath Tribes prior to such authority having been overruled or countermanded by the general council, shall have full force and effect.

SUBCHAPTER J—FISCAL AND FINANCIAL AFFAIRS

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Part 101—Annuity and Other Per Capita Payments

Sec.
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AUTHORITY: §§ 101.1 to 101.5 issued under R. S. 161; 5 U. S. C. 22.

SOURCE: §§ 101.1 to 101.5 appear at 22 F. R. 10540, Dec. 24, 1957.

§ 101.1 *Persons to share payments.* In making all annuity and other per capita payments, the funds shall be equally divided among the Indians entitled thereto share and share alike. The roll for such payments should be prepared on Form 5-322,[1] in strict alphabetical order by families of husband, wife, and unmarried dependent minor children. Unless otherwise instructed, (a) Indians of both sexes may be considered adults at the age of 18 years; (b) deceased enrollees may be carried on the rolls for one payment 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 §§ 11.30-11.32C of this chapter. For individual Indian money regulations, see Part 104 of this chapter.

§ 101.2 *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.

§ 101.3 *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.

§ 101.4 *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.

§ 101.5 *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 102—Regulations for Pro Rata Shares of Tribal Funds

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AUTHORITY: §§ 102.1 to 102.7 issued under sec. 2, 34 Stat. 122, as amended; 25 U. S. C. 121.

SOURCE: §§ 102.1 to 102.7 appear at 22 F. R. 10549, Dec. 24, 1957.

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.

§ 102.1 *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.

§ 102.2 *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 his 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?

[1] Forms may be obtained from the Commissioner of Indian Affairs, Washington 25, D. C.

(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.

§ 102.3 *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.

CROSS REFERENCES: For individual Indian money regulations, see Part 104 of this chapter. For deposits of Indian funds in banks, see Part 105 of this chapter.

§ 102.4 *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 as 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 Secretary'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.

§ 102.5 *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.

§ 102.6 *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 §§ 11.30-11.32C of this chapter.

§ 102.7 *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 104 of this chapter.

Part 104—Indian Money Accounts

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AUTHORITY: §§ 104.1 to 104.12 issued under R. S. 161; 5 U. S. C. 22.

SOURCE: §§ 104.1 to 104.12 appear at 22 F. R. 10910, Dec. 24, 1957.

§ 104.1 *Definitions.* Whenever used in this part the terms defined in this section shall have the meaning stated:

(a) "Commissioner" means the Commissioner of Indian Affairs.

(b) "Area Director" means the officer in charge of an area office for the Bureau of Indian Affairs.

(c) "Superintendent" means the superintendent or other officer in charge of an Indian reservation, agency or establishment.

(d) "Minor" means an individual who has not reached his majority as defined by the laws of the state of his domicile.

(e) "Indian Money Accounts" are those accounts under the control of superintendents or disbursing agents containing funds, regardless of derivation, belonging to individuals.

§ 104.2 *Osage Agency.* The provisions of this part do not apply to funds the deposit or expenditure of which is subject to the provisions of Part 108 of this subchapter.

§ 104.3 *Individual accounts.* Individuals shall have the right to withdraw funds in their Indian money accounts and upon their request the superintendent shall disburse the funds to them at such convenient times and places as the superintendent may designate, except as otherwise provided in this part.

§ 104.4 *Minors.* Funds of a minor may be disbursed for the minor's support, health, education, or welfare to parents, state-appointed guardians, fiduciaries, or to persons having the control and custody of the minor under plans approved by the superintendent, or directly to the minor upon such conditions as the superintendent may prescribe, in such amounts as he may deem necessary in the best interests of the minor. Superintendents are authorized to require modification of an approved plan whenever deemed in the best interest of the minor.

§ 104.5 *Adults under legal disability.* The funds of an adult who is non compos mentis or under other legal disability may be disbursed for his benefit for such purposes deemed to be for his best interest and welfare in the discretion of the superintendent, or the funds may be disbursed to a state-appointed guardian or curator under such conditions as the superintendent may prescribe.

§ 104.6 *Voluntary deposits.* Voluntary deposits shall not be accepted, but Indians who require banking service shall be encouraged to utilize commercial facilities. If in any case it is the judgment of the superintendent that an exception to this prohibition should be made to avoid a substantial hardship, he shall submit the facts in the case to the Area Director who is authorized to allow or deny an exception.

§ 104.7 *Payments by other Federal agencies.* Superintendents are authorized to accept and administer moneys that may be received from the Veterans Administration or other government agency pursuant to the act of February 25, 1933 (47 Stat. 907; 25 U. S. C. 14) for the benefit of adult Indians under legal disability or minors for whom no legal guardian or fiduciary has been appointed.

§ 104.8 *Purchase orders.* Purchase orders shall not be issued except upon the request of the individual and only to meet emergencies.

§ 104.9 *Restrictions.* Funds obligated under assignments made pursuant to a delegation of authority shall be dis-