

REGULATIONS

Friday
January 9, 1981

Highlights

- 2313 Interagency Employee Benefit Council** Executive order
- 2315 Tin Stockpile Contributions** Executive order delegating authority
- 2343 Passports** State eliminates practice under which American citizen under age 13 may be included in U.S. passport issued to parent or sibling; effective 1-1-81
- 2329 School Breakfast and Lunch Programs** USDA/FNS excludes Job Corps centers from participation in School Nutrition Programs; effective 1-1-81
- 2331 School Breakfast and Lunch Programs** USDA/FNS amends Food Distribution Program regulations; effective 1-1-81
- 2332 Food Stamps** USDA/FNS provides new procedures for States to report on reconciliation of Authorization to Participate (ATP) cards and issuance and participation data; effective 2-1-81
- 2390 Indians—Claims** Interior/BIA announces extinguishment of all land and related claims of the Maine Indians

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 115

Payment of Sioux Benefits; Eligibility Criteria and Application Procedures Governing Benefits

December 19, 1980.

AGENCY: Bureau of Indian Affairs.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs proposes to add a new Part 115 to Subchapter J, Chapter I, Title 25 of the Code of Federal Regulations. The proposed rule would prescribe the eligibility criteria and application procedures governing payment of "Sioux benefits" under the 1889 Sioux Allotment Act, as amended, the 1928 Sioux Benefits Act, and section 14 of the 1934 Indian Reorganization Act (25 U.S.C. 474). Revision of the Bureau's regulations is required as a result of a suit brought against the Bureau by South Dakota Legal Services on behalf of Mrs. Josephine High Elk, a Cheyenne River Sioux. The litigation challenged the constitutionality of the Bureau's eligibility requirements governing Sioux benefits on the ground that they discriminated against plaintiff on the basis of sex and on the basis of the race or tribal affiliation of her spouse. Promulgation of the proposed regulations would resolve the pending litigation by establishing non-discriminatory criteria for determining "head of family" eligibility for Sioux benefits.

DATES: Comments on the proposed rulemaking must be received on or before February 9, 1981.

ADDRESSES: Written comments may be mailed or delivered to Barbara C. Davis, Branch of Trust Funds, Bureau of Indian Affairs, Room 4540, CODE 207, Department of the Interior, 18th & C Sts. N.W., Washington, D.C. 20240; telephone (202) 343-2963.

FOR FURTHER INFORMATION CONTACT: Sandra R. Etheridge, Division of Indian Affairs, Office of the Solicitor, Department of the Interior, Washington, D.C., 20240; telephone (202) 343-9405.

SUPPLEMENTARY INFORMATION: "Sioux benefits" are articles of farming equipment and stock, or, more commonly today, the commuted cash value of such articles, payable by the Bureau to certain Sioux Indians under the provisions of four Federal statutes—the 1889 Sioux Allotment Act (Act of March 2, 1889, c. 405, § 17, 25 Stat. 888, 895), an 1896 amendment to that act (Act of June 10, 1896, c. 398, 29 Stat. 321, 334),

a 1928 statute which continued those benefits (Act of May 21, 1928, c. 662, 45 Stat. 684) and section 14 of the Indian Reorganization Act (Act of June 18, 1934, c. 576, § 14, 48 Stat. 984, 987, 25 U.S.C. 474). Under each of these statutes, only Sioux Indians who are single persons over the age of eighteen or heads of a family are eligible. In addition, the applicant must have received an allotment of land to be eligible for benefits under the 1889 or 1928 statutes. The 1934 law continued such benefits for unallotted Indians on the Pine Ridge, Rosebud, and Cheyenne River Reservations with provision for a gradual phase-out of such benefits.

The primary change in existing Bureau policies regarding Sioux benefits made by the proposed regulations would be with respect to revising the standards for determining whether an applicant is a "head of a family" eligible for Sioux benefits. Prior to this time, the BIA has employed a rule that a Sioux woman married to a Sioux man cannot be considered the head of a family for payment of Sioux benefits, but a Sioux woman married to a non-Sioux man could receive the benefits as the head of the family. This standard was challenged as discriminating against Sioux women on the basis of sex and on the basis of the race or tribal affiliation of their husbands. Under the Federal statutes, there is no difference in the amount of benefit payments between single adults and heads of families, and it is necessary to prove "head of family" status only if an applicant is not eligible for benefits as a single adult. Therefore, the regulations provide that all unmarried persons over the age of eighteen (including persons who are single, legally separated, divorced, or widowed) may apply as "single." Only persons under eighteen and married persons would have to prove "head of family" status as a condition of receiving the benefits. With respect to married applicants, determination of whether a person is head of a family will not turn on whether that person is the husband or wife, or whether an applicant's husband is a Sioux. Instead, either spouse can be considered the head of the family if the applicant and his or her spouse so agree. If the applicant and spouse do not agree on whether the husband or wife is the head of the family, an economic contribution test is used to determine "head of family" status. This test is also used for married applicants who are physically, but not legally, separated from their spouses and for married applicants whose spouses have previously received the benefits as head of the family. *It*

should be noted that the proposed regulations do allow for the possibility of a husband and wife each receiving the benefits as head of the family at different points in time and do not prevent a person from receiving Sioux benefits merely because his or her spouse has previously received the benefits either before or during their marriage. In no case, however, can a person receive more than one payment of benefits in his or her own right, either as a single person or as a head of a family. Persons who have been denied payment of Sioux benefits under prior regulations would be allowed to reapply under the new standards.

The proposed regulations cannot be promulgated as final rules until inconsistent decisions regarding payment of Sioux benefits issued by the General Accounting Office are modified or rescinded.

The primary author of this document is John L. Saxon, formerly Attorney, Division of Indian Affairs, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240.

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

This proposed rule is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

It is proposed to amend Subchapter J of Chapter I of Title 25 of the Code of Federal Regulations by addition of a new Part as follows:

PART 115—PAYMENT OF SIOUX BENEFITS

Sec.

- 115.1 Scope.
- 115.2 Purpose.
- 115.3 Definitions.
- 115.4 Eligibility.
- 115.5 Application procedure.
- 115.6 Administration.

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; R.S. § 463, 25 U.S.C. 2; R.S. § 465, and 25 U.S.C. 9.

§ 115.1 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.

§ 115.2 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."

§ 115.3 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 section 115.4(c)(1) or (2) (if living with his/her spouse) or section 115.4(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 section 115.4(c)(3).

(h) For the purpose of determining family support under sections 115.4(c)(2) and 115.4(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.

§ 115.4 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 § 115.4(c));

(3) Where his/her allotment was taken under the provisions of the Act of May 29, 1908, 35 Stat. 444, 451, he/she has duly made application for Sioux benefits, and such application has been approved during his/her lifetime (as provided in § 115.5); and

(4) He/she has not previously been paid Sioux benefits in his/her own right (as provided in § 115.4(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 Sioux Indians of the Cheyenne River Indian Reservation 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 Sioux Indian belonging to the Cheyenne River Indian Reservation 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 § 115.4(c));

(3) He/she has duly made application for Sioux benefits and such application has been approved during his/her lifetime (as provided in § 115.5);

(4) He/she has not previously been paid Sioux benefits in his/her own right (as provided in § 115.4(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 sections 115.4(a) and 115.4(b).

(1) Except as provided in section 115.4(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 concur 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 payments 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 is 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 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.

§ 115.5 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 by unallotted Sioux Indians applying pursuant to the Act of June 18, 1934, c. 576, § 14, 48 Stat. 984, 987, 25 U.S.C. 474, or by Sioux Indians whose allotments were taken under the Act of May 29, 1908, c. 216, § 19, 35 Stat. 444, 451, 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 2, and the Commissioner's determination shall be subject to the administrative appeal procedures of 43 CFR 4.350 *et seq.* 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.

(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 section 115.4(b) is established as of the date of such initial application.

§ 115.6 Administration.

(a) No payment of Sioux benefits may be made unless an application therefor has been made and approved 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.

Thomas W. Fredericks,
Deputy Assistant Secretary—Indian Affairs.

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Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Public Disclosure of Comments Received From Federal Agencies on the Iowa State Program Resubmitted Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM) U.S. Department of the Interior.

ACTION: Announcement of Public Disclosure of Comments on the Iowa Program Resubmission.

SUMMARY: Before the Secretary of the Interior may approve permanent state regulatory programs submitted under Section 503(a) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the views of certain federal agencies must be solicited and disclosed. The Secretary has solicited comments from these agencies, and is today announcing receipt and availability for public review of agency comments.

ADDRESSES: Copies of the comments received are available for public review during business hours at:

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Ave., Kansas City, Missouri 64106, Telephone (816) 374-3920

Department of Soil Conservation, Mines and Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319, Telephone (515) 281-5774.

FOR FURTHER INFORMATION CONTACT: Richard Rieke, Assistant Regional Director, State and Federal Programs, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone (816) 374-3920.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior is evaluating the permanent regulatory program resubmitted by Iowa on December 15, 1980. For the detailed background on the Iowa submission, see the following notices published in the Federal Register: March 6, 1980 (45 FR 14598-14599), April 25, 1980 (45 FR 27953-27954), June 18, 1980 (45 FR 41164-41166), October 16, 1980 (45 FR 68673-68686) and December 15, 1980 (45 FR 82276-82278). In accordance with Section 503(b)(1) of SMCRA and 30 CFR 732.13(b)(1) the Iowa program may not be approved until the Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads