Dated: April 15, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

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BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 61

RIN 1076–AD89

Preparation of Rolls of Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is amending its regulations governing the compilation of rolls of Indians in order to reopen the enrollment application process for the Sisseton and Wahpeton Mississippi Sioux Tribe. The amendment reopens the enrollment period to comply with a directive of the Eighth Circuit Court of Appeals, and to modify the standards used to verify Sisseton and Wahpeton Mississippi Sioux Tribe ancestry.

DATES: This rule becomes effective on May 24, 1999.

FOR FURTHER INFORMATION CONTACT: Daisy West, 202–208–2475.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Indian Affairs must reopen the enrollment application process authorized under 25 U.S.C. 1300d–3(b) to give individuals another opportunity to file applications to share in the Sisseton and Wahpeton Mississippi Sioux judgment fund distribution. The Eighth Circuit Court of Appeals decision in *Loudner* v. *U.S.*, 108 F. 3d 896 (8th Cir. 1997), held that the Bureau of Indian Affairs did not give proper notice of the application period, and that 5 months was not a sufficient time period within which to file applications, in light of the long delay in distribution of the fund.

This rule reopens the enrollment period to allow adequate time for eligible persons to enroll. It also identifies the specific rolls that we will use to verify Sisseton and Wahpeton Mississippi Sioux Tribe ancestry as required by subsection 7(c) of Pub. L. 105–387.

On July 8, 1998, the Bureau of Indian Affairs (BIA) published a proposed amendment to 25 CFR Part 61 in the **Federal Register** at 63 FR 36866. Since then, three things have happened:

(1) On November 13, 1998, Congress amended the Act of October 25, 1972, Pub. L. 555, 86 Stat. 1168, to include a provision concerning verification of Sisseton and Wahpeton Mississippi Sioux Tribe ancestry.

(2) BIA held a meeting in Sioux Falls, South Dakota with a group of approximately 30 Sisseton and Wahpeton Mississippi Sioux lineal descendants and others to discuss the proposed rule that was published on July 8, 1998.

(3) We have received two public comments on the proposed rule.

In light of these three occurences, we have made several changes to the provisions that we published in the proposed rule. We have explained these changes in the section of this preamble titled ''Changes to the Proposed Rule.''

Review of Public Comments

We received written comments from two individuals. Those comments and our responses are as follows:

1. *Comment:* We take issue with the timing proposed for establishing the application deadline date and object to steps two and three as set forth under the provisions of ''Application Deadline''. Due to the court proceedings in the *Loudner* case, there has already been a great deal of publicity, correspondence, newspaper articles, and published summaries about the rights of lineal descendants since October 1994. There have also been at least three public meetings at the Crow Creek and Yankton Sioux Reservations in South Dakota. For that reason, the lineal descendants who would be entitled to share in the judgment fund distribution already know that judgment funds are available and that they can apply for them. The application period should be set for a fixed period of 60 days.

Response: While there has been publicity in North and South Dakota about the reopening of this enrollment period, there has been little if any publicity about this in other parts of the United States. A flexible application period will allow us to continue accepting applications until the application review process is almost complete without significantly affecting the time required to complete the review process. It will also give the lineal descendants who live away from the Sioux Indian reservations the maximum opportunity to file applications. As mentioned elsewhere in this preamble, we are reducing the number of days specified in step one of the application process from 180 days to 90 days because of the number of applications already on file with the Aberdeen Area Office.

2. *Comment:* If the Bureau of Indian Affairs cannot process the applications within 90 days, the rule should either allow the Federal Court to conduct the review or enable the Secretary to retain an independent commercial agency to do the review.

Response: The approximately 3,000 applications that we have received are mostly undocumented. They do not include copies of birth certificates, marriage certificates, proof of paternity, or, if deceased, death certificates. The applications also do not include family history charts that show each generation between the applicant and an ancestor named on the Sisseton and Wahpeton Mississippi Sioux Tribe rolls specified under 25 U.S.C. 1300d–26(c). If we were to limit the review process to 90 days, we would have to deny most of the applications because they don't include these documents. We would prefer not to do this because most of the applicants are probably Sisseton and Wahpeton Mississippi Sioux lineal descendants. By extending the review process we will have time to review each application and ask the applicant for any information that we cannot find in our records.

We also do not think it is feasible for us to ''allow the Federal Court to conduct the review'' under federal regulations. If the court were to assume jurisdiction of the review, it would probably still leave the review process with us. We would be required to submit several thousand recommendations to the court for determination. Each determination would then be subject to appeal.

If the review is conducted by the Bureau of Indian Affairs, an independent contractor, or under the supervision of the court, the same problem remains—insufficient documentation to verify the applicant's ancestry. If an applicant's ancestry cannot be sufficiently documented, then the application must be denied under 25 U.S.C. 1300d–26(c).

As we've already explained, a 90-day limitation on the review process would force us to deny the many applications that do not include proof of Sisseton and Wahpeton Mississippi Sioux ancestry.

Changes to the Proposed Rule

As a result of the new legislation, we have made the following changes to the rule:

(1) We have added new criteria relating to ancestry in § 61.4(s)(1)(i)(A)–(B). These new criteria replace the

criterion in § 61.4(s)(1)(iv) of the proposed rule.

(2) We have added new names to the list in § 61.4(s)(1)(v). This list was in § 61.4(s)(1)(iv) of the proposed rule.

As a result of the public meeting and comments, we have changed the procedure that we will use to calculate the deadline for receiving applications. Specifically, we have reduced the number of days that we will use in step one of this procedure from 180 to 90. (We have explained the procedure we will use to calculate the application deadline in the section of this preamble titled ''Application Deadline.'') We have made this change because approximately 3,000 individuals have already contacted the BIA Aberdeen Area Office concerning the reopening of the Sisseton and Wahpeton Mississippi Sioux enrollment application process.

Application Deadline

We have not established a firm application deadline in this rule. In order to allow adequate time for submitting and processing applications we will establish a deadline using the following three steps:

Step 1. On August 23, 1999, we will count all applications that we have received.

Step 2. We will note the date on which we complete processing of 90 percent of the applications that we receive by August 23, 1999.

Step 3. The application deadline will be 90 days after the date in Step 2.

For example, if we receive 10 applications by August 23, 1999, the final application deadline date will be 90 days after we process 9 applications. Similarly, if we receive 10,000 applications by August 23, 1999, the final application deadline date will be 90 days after we process 9,000 applications.

After we establish the application deadline, we will notify the same area directors, agency superintendents, and local newspapers that we notify after publishing this rule. (See the section in this preamble titled ''Additional Notice and Public Meetings.'') Our notification will include application/enrollment criteria.

Additional Notice and Public Meetings

We will take several steps to ensure that all potential applicants are informed of the reopening of the enrollment application period.

(1) We will notify all BIA Area Directors and Agency Superintendents and require them to post notices in area offices, agency offices, community centers on and near reservations, and in Indian Health Clinics.

(2) We will notify tribal newspapers and newspapers of general circulation in major communities in Montana, North Dakota, South Dakota, Nebraska, and Minnesota.

(3) We will hold community meetings on Indian reservations identified from the 1909 roll, including: Cheyenne River, Crow Creek, Upper Sioux, Sisseton-Wahpeton, Spirit Lake, Fort Peck, Standing Rock, Lower Brule, Yankton, Rosebud, and Pine Ridge.

At each of the community meetings we will:

(1) Inform potential beneficiaries of the reopening of the enrollment process for this judgment fund;

(2) Inform potential beneficiaries of eligibility criteria; and

(3) Help applicants to prepare and file applications.

Previously Submitted Applications

We have on file applications submitted under § 61.4(s) that we denied because we received them after November 1, 1973. We will now process these applications. If you previously filed an application that we denied, you may wish to confirm that we have it and are processing it. To do this, please call the Aberdeen Area Tribal Enrollment Office at (605) 226–7376.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because it makes technical changes that do not affect the substance of the rules there is no economic effect at all, other than to improve the utility of the rules for users.

Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Does not have an annual effect on the economy of $100 million or more.

(2) Will not cause a major increase in cost or prices for consumers, individual industries, Federal, State, or geographic regions.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 12612)

In accordance with Executive Order 12612, the rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule requires collection of information from many enrollees. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d), the Department submitted a copy of the application to the Office of Management and Budget (OMB) for its review. OMB approved the application form and assigned form number 1076–0145 with the expiration date of September 30, 2001.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the

quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

List of Subjects in 25 CFR Part 61

Indians, Indians—claims.

Dated: April 14, 1999.

Kevin Gover,

Assistant Secretary for Indian Affairs.

For the reasons given in the preamble, Part 61 of Chapter 1 of Title 25 of the Code of Federal Regulations is amended as follows.

PART 61—PREPARATION OF ROLLS OF INDIANS

1. The authority citation for 25 CFR part 61 is revised to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9, 1300d–3(b), 1300d–26, 1401 *et seq.*

2. In § 61.4, paragraph (s) is revised to read as follows:

§ 61.4 Qualifications for enrollment and the deadline for filing application forms.

* * * * *

(s) *Sisseton and Wahpeton Mississippi Sioux Tribe.* (1) Persons meeting the criteria in this paragraph are entitled to enroll under 25 U.S.C. 1300d–3(b) to share in the distribution of certain funds derived from a judgment awarded to the Mississippi Sioux Indians. To be eligible a person must:

(i) Be a lineal descendent of the Sisseton and Wahpeton Mississippi Sioux Tribe;

(A) Those individuals who applied for enrollment before January 1, 1998, and whose applications were approved by the Aberdeen Area Director before that same date, are deemed to appear in records and rolls acceptable to the Secretary or have a lineal ancestor whose name appears in these records;

(B) Those individuals who apply for enrollment after January 1, 1998, or whose application was not approved by the Aberdeen Area Director before that same date, must be able to trace ancestry to a specific Sisseton or Wahpeton Mississippi Sioux Tribe lineal ancestor who was listed on:

(*1*) The 1909 Sisseton and Wahpeton annuity roll;

(*2*) The list of Sisseton and Wahpeton Sioux prisoners convicted for participating in the outbreak referred to as the ''1862 Minnesota Outbreak'';

(*3*) The list of Sioux scouts, soldiers, and heirs identified as Sisseton and Wahpeton Sioux on the roll prepared under the Act of March 3, 1891 (26 Stat. 989 *et seq.*, Chapter 543); or

(*4*) Any other Sisseton or Wahpeton payment or census roll that preceded a roll referred to in paragraphs (s)(1)(i)(B)(*1*), (*2*), or (*3*) of this section.

(ii) Be living on October 25, 1972;

(iii) Be a citizen of the United States;

(iv) Not be listed on the membership rolls for the following tribes:

(A) The Flandreau Santee Sioux Tribe of South Dakota;

(B) The Santee Sioux Tribe of Nebraska;

(C) The Lower Sioux Indian Community at Morton, Minnesota;

(D) The Prairie Island Indian Community at Welch, Minnesota;

(E) The Shakopee Mdewakanton Sioux Community of Minnesota;

(F) The Spirit Lake Tribe (formerly known as the Devils Lake Sioux of North Dakota);

(G) The Sisseton-Wahpeton Sioux Tribe of South Dakota; or

(H) The Assiniboine and Sioux Tribes of the Fort Peck Reservation.

(v) Not be listed on the roll of Mdewakantan and Wahpakoota lineal descendants prepared under 25 U.S.C. 1300d–1(b).

(2) The initial enrollment application period that closed on November 1, 1973, is reopened as of May 24, 1999. The application period will remain open until further notice.

* * * * *

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DEPARTMENT OF JUSTICE

28 CFR Part 70

Uniform Administrative Requirements for Grants and Agreements (Including Subawards) with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations

CFR Correction

In Title 28 of the Code of Federal Regulations, parts 43 to End, revised as of July 1, 1998, the text appearing on page 339, following page 238, is incorrect and should be removed. The text on page 239 should read as follows:

* * * * *

(b) Except as provided in paragraph (h) of this section, program income earned during the project period must be retained by the recipient and, in accordance with the Department regulations or the terms and conditions of the award, must be used in one or more of the ways listed in the following:

(1) Added to funds committed to the project by the Department and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When the Department authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2), of this section, program income in excess of any limits stipulated must be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Department does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3), of this section applies automatically to all projects or programs.

(e) Unless the Department's regulations or the terms and conditions of the award provide otherwise, recipients will have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property must be handled in accordance with the requirements of the Property Standards (See § § 70.30 through 70.37).

(h) Unless the terms and conditions of the award provide otherwise, recipients will have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

(i) Recipients must account for seized assets from the date of seizure until forfeiture and liquidation of funds occur.

§ 70.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon the Department's requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.