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party to show cause why the appeal should not be either dismissed or granted, as appropriate. If no cause is shown, the Board may take appropriate action.

§ 4.128 Remands from courts.

Whenever any matter is remanded to the Board from any court for further proceedings, each of the parties, shall, within 20 days of such remand, submit a report to the Board, recommending procedures to be followed in order to comply with the court's order. The Board will review the reports and issue the appropriate special orders.

APPENDIX I TO SUBPART C OF PART 4—
SUGGESTED FORM OF NOTICE OF APPEAL

Interior Board of Contract Appeals, 801
North Quincy Street, Arlington, VA 22203

(Date) _____
(Name of Contractor) _____
(Address) _____
Contract No. _____
(Invitation No.) _____
Specifications No. _____
(Name and Location of Project) _____
(Name of Bureau or Office) _____

The undersigned contractor appeals to the Board of Contract Appeals from decision or findings of fact dated _____, by:
(Name of Contracting Officer) _____

The decision or findings of fact is erroneous because: (State specific facts and circumstances and the contractual provisions involved.)
(Signature) _____
(Title) _____

[46 FR 57499, Nov. 24, 1981, as amended at 67 FR 4368, Jan. 30, 2002]

Subpart D—Rules Applicable in Indian Affairs Hearings and Appeals

AUTHORITY: Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b, 410, 100 Stat. 61, as amended by 101 Stat. 886 and 101 Stat. 1433, 25 U.S.C. 331 note.

CROSS REFERENCE: See 25 CFR part 15 for rules setting forth the responsibilities and practices of the Bureau of Indian Affairs in the probate of Indian estates. See subpart A of this part for the authority, jurisdiction, and membership of the Board of Indian Appeals within the Office of Hearings and Appeals. For general rules applicable to pro-

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ceeding before the Hearings Division, Board of Indian Appeals, and other Appeals Boards of the Office of Hearings and Appeals, see subpart B of this part.

DETERMINATIONS OF HEIRS AND APPROVAL OF WILLS, EXCEPT AS TO MEMBERS OF THE FIVE CIVILIZED TRIBES AND OSAGE INDIANS; TRIBAL PURCHASES OF INTERESTS UNDER SPECIAL STATUTES

SCOPE OF REGULATIONS; DEFINITIONS; GENERAL AUTHORITY OF OHA DECIDING OFFICIALS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.200 Scope of regulations.

Included in §§ 4.200 through 4.202 are general rules applicable to all proceedings in subpart D of this part. Included in §§ 4.203 through 4.282 and §§ 4.310 through 4.323 are procedural rules applicable to the settlement of trust estates of deceased Indians who die possessed of trust property; however, these rules do not apply to the restricted property of deceased Indians of the Five Civilized Tribes, deceased Osage Indians, and members of any tribe organized under 25 U.S.C. 476, to the extent that the constitution, by-laws or charter of each tribe may be inconsistent with this subpart. Included within §§ 4.300 through 4.308 are supplemental procedural rules applicable to determinations as to tribal purchase of certain property interests of decedents under special laws applicable to particular tribes. Included within §§ 4.330 through 4.340 are procedural rules applicable to appeals to the Board of Indian Appeals from administrative actions or decisions issued by the Bureau of Indian Affairs as set forth in § 4.330. Except as limited by the provisions herein, the rules in subparts A and B of this part apply to these proceedings.

§ 4.201 Definitions.

As used in this subpart:

Agency means the agency office or any other designated office in BIA having jurisdiction over trust or restricted property and money. This term also means any office of a tribe which has

contracted or compacted the BIA probate function under 25 U.S.C. 450f or 458cc.

Attorney decision maker means an attorney with BIA who reviews a probate package, determines heirs, approves wills and beneficiaries of the will, determines creditors' claims, and issues a written decision to the extent authorized by 25 CFR part 15.

Beneficiary means any individual who receives trust or restricted property or money in a decedent's will.

BIA means the Bureau of Indian Affairs within the Department of the Interior.

BIA deciding official means the official with the delegated authority to make a decision on a probate matter pursuant to 25 CFR part 15, and may include a BIA regional director, agency superintendent, field representative, or attorney decision maker.

Board means the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary, authorized by the Secretary to hear, consider, and determine finally for the Department appeals taken by aggrieved parties from actions by OHA deciding officials on petitions for rehearing or reopening, and allowance of attorney fees, and from actions of BIA officials as provided in §4.1(b)(2).

Child or *children* includes an adopted child or children.

Commissioner includes the Deputy Commissioner of Indian Affairs and his or her authorized representatives.

Day means a calendar day, unless otherwise stated.

Decedent means a person who is deceased.

Department means the Department of the Interior.

Estate means the trust cash assets and restricted or trust property owned by the decedent at the time of his or her death.

Heir means any individual who receives trust or restricted property or money from a decedent in an intestate proceeding.

IIM account means funds held in an individual Indian monies account by OTFM or a tribe performing this function under a contract or compact.

Intestate means the decedent died without a will.

Minor means an individual who has not reached the age of majority as defined by the applicable tribal or state law.

OHA deciding official means an employee of the Office of Hearings and Appeals with the authority to make a decision on a probate matter pursuant to this subpart. The OHA deciding official may be either an administrative law judge appointed pursuant to the Administrative Procedure Act, 5 U.S.C. 3105, or an Indian probate judge.

OTFM means the Office of Trust Funds Management within the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

Party in interest means any presumptive or actual heir, any beneficiary under a will, any party asserting a claim against a deceased Indian's estate, and any Tribe having a statutory option to purchase interests of a decedent.

Probate means the legal process by which applicable tribal law, state law, or federal law that affects the distribution of the decedent's estate is applied to:

- (1) Determine the heirs,
- (2) Approve wills and determine beneficiaries, and
- (3) Transfer any funds or property held in trust by the Secretary for a decedent, or any restricted property of the decedent, to the heirs, beneficiaries, or other persons or entities.

Probate specialist means a BIA or tribal employee who is trained in Indian probate matters.

Restricted property means real or personal property held by an Indian which he or she cannot alienate or encumber without the consent of the Secretary or his or her authorized representative. In this subpart, restricted property is treated as if it were trust property. Except with respect to §4.200, the term "restricted property" as used in this subpart does not include the restricted lands of the Five Civilized Tribes or Osage Tribe of Indians.

Secretary means the Secretary of the Interior or his or her authorized representative.

Solicitor means the Solicitor of the Department of the Interior or his or her authorized representative.

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Superintendent means the BIA Superintendent or other BIA officer having jurisdiction over an estate, including area field representatives or one holding equivalent authority.

Testate means the decedent executed a will before his or her death.

Trust property means real or personal property, or an interest therein, which the United States holds in trust for the benefit of an individual Indian.

Will or last will and testament means a written testamentary document, including any properly executed written changes, called codicils, which was signed by the decedent and was attested by two disinterested adult witnesses, that states who will receive the decedent's trust or restricted property.

§ 4.202 General authority of OHA deciding officials.

An OHA deciding official will, except as otherwise provided in § 4.205(b) and 25 CFR 15.203 and 15.206, determine the heirs of any Indian who dies intestate possessed of trust property; approve or disapprove the will of a deceased Indian disposing of trust property; accept or reject any full or partial renunciation of interest in both testate and intestate proceedings; allow or disallow creditors' claims against the estate of a deceased Indian; and decree the distribution of trust property to heirs and devisees, including the partial distribution to known heirs or devisees where one or more potential heirs or devisees are missing but not presumed dead, after attributing to and setting aside for such missing person or persons the share or shares such person or persons would be entitled to if living. An OHA deciding official will determine the right of a tribe to take any inherited interest and the fair market value of the interest taken in appropriate cases as provided by statute. He or she will review each case de novo, hold hearings as necessary or appropriate, and issue decisions in matters appealed from decisions of BIA deciding officials. Administrative law judges will also hold hearings and issue recommended decisions in matters referred to them by the Board in the Board's consideration of appeals from administrative actions of BIA officials.

43 CFR Subtitle A (10-1-03 Edition)

DETERMINATION OF HEIRS; APPROVAL OF WILLS; SETTLEMENT OF INDIAN TRUST ESTATES

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.203 Determination as to non-existent persons and other irregularities of allotments.

(a) An OHA deciding official will hear and determine whether trust patents covering allotments of land were issued to nonexistent persons, and whether more than one trust patent covering allotments of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) If an OHA deciding official determines under paragraph (a) of this section that a trust patent issued to an existing person and/or that separate persons received the allotments under consideration and any one of them is deceased, without having had his or her estate probated, the OHA deciding official must proceed as provided in § 4.202.

(c) If an OHA deciding official determines under paragraph (a) of this section that a person did not exist or that more than one allotment was issued to the same person, the OHA deciding official must issue a decision to that effect, giving notice thereof to parties in interest as provided in § 4.240(b).

§ 4.204 Presumption of death.

(a) An OHA deciding official will receive evidence on and determine the issue of whether any person, by reason of unexplained absence, is to be presumed dead.

(b) If an OHA deciding official determines that an Indian person possessed of trust property is to be presumed dead, the OHA deciding official must proceed as provided in § 4.202.

§ 4.205 Escheat.

An OHA deciding official will determine whether any Indian holder of trust property died intestate without heirs and—

(a) With respect to trust property other than on the public domain, order the escheat of such property in accordance with 25 U.S.C. 373a.