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

(1) A copy of the death certificate if one exists. If there is no death certificate, then another form of official written evidence of the death such as a burial or transportation of remains permit, coroner's report, or church registry of death. Secondary forms of evidence of death such as an affidavit from someone with personal knowledge concerning the fact of death or an obituary or death notice from a newspaper may be used only in the absence of any official proof or evidence of death.

(2) Data for heirship finding and family history, certified by the Project Director. Such data shall contain:

(i) The facts and alleged facts of the decedent's marriages, separations and divorces, with copies of necessary supporting documents;

(ii) The names and last known addresses of probable heirs at law and other known parties in interest;

(iii) Information on whether the relationships of the probable heirs at law to the decedent arose by marriage, blood, or adoption.

(3) Known heirship determinations, including those recognized by the Act determining the heirs of relatives of the decedent, and including those rendered by courts from Minnesota or other states, by tribal courts, or by tribunals authorized by the laws of other countries.

(4) A report of the compensation due the decedent, including interest calculated to the date of death of the decedent, and an outline of the derivation of such compensation, including its real property origins and the succession of the compensation to the deceased, citing all of the intervening heirs at law, their fractional shares, and the amount of compensation attributed to each of them.

(5) A certification by the Project Director or his designee that the addresses provided for the parties in interest were furnished after having made a due and diligent search.

[56 FR 61383, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991]

§ 4.352 Determination of administrative judge and notice thereof.

(a) Upon review of all data submitted by the Project Director, the administrative judge will determine whether or

not there are any apparent issues of fact that need to be resolved.

(b) If there are no issues of fact requiring determination, the administrative judge will enter a preliminary determination of heirs based upon inheritance laws in accordance with the Act. Such preliminary determination will be entered without a hearing, and, when possible and based upon the data furnished and/or information supplementary thereto, shall include the names, birth dates, relationships to the decedent, and shares of the heirs, or the fact that the decedent died without heirs.

(1) Upon issuing a preliminary determination, the administrative judge shall issue a notice of such action and shall mail a copy of said notice, together with a copy of the preliminary determination, to each party in interest allowing forty (40) days in which to show cause in writing why the determination should not become final. The administrative judge shall cause a certificate to be made as to the date and manner of such mailing.

(2) The Project Director shall also cause, within seven (7) days of receipt of such notice, the notice of the preliminary determination to be posted in the following sites:

The White Earth Band, Box 418, White Earth, Minnesota 56591
The Minnesota Chippewa Tribe, Box 217, Cass Lake, Minnesota 56633
Minnesota Agency, Bureau of Indian Affairs, Room 418, Federal Building, 522 Minnesota Avenue, NW, Bemidji, Minnesota 56601-3062

and in such other sites as may be deemed appropriate by the Project Director. Such other sites may include, but not be limited to:

Elbow Lake Community Center, R.R. 12, Waubun, Minnesota 56589
Postmaster, Callaway, Minnesota 56521
Community Center, Route 2, Bagley, Minnesota 56621
Community Center, Star Route, Mahnomen, Minnesota 56557
Postmaster, Mahnomen, Minnesota 56557
Rice Lake Community Center, Route 2, Bagley, Minnesota 56621
Postmaster, Ogema, Minnesota 56569
Pine Point Community Center, Ponsford, Minnesota 56575
Postmaster, White Earth, Minnesota 56591
White Earth IHS, White Earth, Minnesota 56591

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Postmaster, Ponsford, Minnesota 56575
American Indian Center, 1113 West Broadway, Minneapolis, Minnesota 55411
American Indian Center, 1530 East Franklin Avenue, Minneapolis, Minnesota 55404
American Indian Center, 341 University Avenue, St. Paul, Minnesota 55103
Little Earth of United Tribes Community Services, 2501 Cedar Avenue South, Minneapolis, Minnesota 55404
Naytahwaush Community Center, Naytahwaush, Minnesota 56566

The Project Director shall provide a certificate showing when the notice of the preliminary determination was forwarded for posting, and to which locations. A posting certificate showing the date and place of posting shall be signed by the person or official who performs the act and returned to the Project Director. The Project Director shall file with the administrative judge the original posting certificates and the Project Director's certificate of mailing showing the posting locations and when the notice of the preliminary determination was forwarded for posting.

(3) If no written request for hearing or written objection is received in the office of the administrative judge within the forty (40) days of issuance of the notice, the administrative judge shall issue a final order declaring the preliminary determination to be final thirty (30) days from the date on which the final order is mailed to each party in interest.

(c) When the administrative judge determines either before or after issuance of a preliminary determination that there are issues which require resolution, or when a party objects to the preliminary determination and/or requests a hearing, the administrative judge may either resolve the issues informally or schedule and conduct a prehearing conference and/or a hearing. Any prehearing conference, hearing, or rehearing, conducted by the administrative judge shall be governed insofar as practicable by the regulations applicable to other hearings under this part and the general rules in subpart B of this part. After receipt of the testimony and/or evidence, if any, the administrative judge shall enter a final order determining the heirs of the decedent, which shall become final thirty (30) days from the date on which the

final order is mailed to each party in interest.

(d) The final order determining the heirs of the decedent shall contain, where applicable, the names, birth dates, relationships to the decedent, and shares of heirs, or the fact that the decedent died without heirs.

[56 FR 61383, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991; 57 FR 2319, Jan. 21, 1992, as amended at 64 FR 13363, Mar. 18, 1999]

§ 4.353 Record.

(a) The administrative judge shall lodge the original record with the Project Director.

(b) The record shall contain, where applicable, the following materials:

(1) A copy of the posted public notice of preliminary determination and/or hearing showing the posting certificates, the administrative judge's certificate of mailing, the posting certificates, and the Project Director's certificate of mailing.

(2) A copy of each notice served on parties in interest, with proof of mailing;

(3) The record of evidence received, including any transcript made of testimony;

(4) Data for heirship finding and family history, and data supplementary thereto;

(5) The final order determining the heirs of the decedent and the administrative judge's notices thereof; and

(6) Any other material or documents deemed relevant by the administrative judge.

§ 4.354 Reconsideration or rehearing.

(a) Any party aggrieved by the final order of the administrative judge may, within thirty (30) days after the date of mailing such decision, file with the administrative judge a written petition for reconsideration and/or rehearing. Such petition must be under oath and must state specifically and concisely the grounds upon which it is based. If it is based upon newly discovered evidence, it shall be accompanied by affidavits of witnesses stating fully what the new evidence or testimony is to be. It shall also state justifiable reasons for the prior failure to discover and present the evidence.