AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

(a) The term *Secretary* means the Secretary of the Interior or his authorized representative;

(b) The term *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 administrative law judges on petitions for rehearing or reopening, and allowance of attorney fees;

(c) The term *Commissioner* means the Commissioner of Indian Affairs or his authorized representative;

(d) The term *Superintendent* means the Superintendent or other officer having jurisdiction over an estate, including area field representatives or one holding equivalent authority;

(e) The terms *agency* and *Indian agency* mean the Indian agency or any other designated office in the Bureau of Indian Affairs having jurisdiction over trust property;

(f) *Administrative law judge* (hereinafter called administrative law judge) means any employee of the Office of Hearings and Appeals upon whom authority has been conferred by the Secretary to conduct hearings in accordance with the regulations in this subpart;

(g) The term *Solicitor* means the Solicitor of the Department of the Interior or his authorized representative;

(h) The term *Department* means the Department of the Interior;

(i) The term *parties 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.

(j) The term *minor* means an individual who has not reached his majority as defined by the laws of the State where the deceased's property is situated;

(k) The words *child* or *children* include adopted child or children;

(l) The words *will* and *last will and testament* include codicils thereto;

(m) The term *trust property* means real or personal property title to which is in the United States for the benefit of an Indian. In this subpart ''restricted property'' (real or personal property held by an Indian which he may not alienate without the consent of the Secretary or his authorized representative), is treated as if it were trust property, and conversely trust property is treated as restricted property.

[36 FR 7186, Apr. 15, 1971, as amended at 39 FR 31636, Aug. 30, 1974]

§4.202 General authority of administrative law judges.

Administrative law judges shall determine the heirs of Indians who die intestate possessed of trust property, except as otherwise provided in §§4.205(b) and 4.271; approve or disapprove wills of deceased Indians disposing of trust property; accept or reject full or partial renunciations of interest in both testate and intestate proceedings; allow or disallow creditors' claims against estates of deceased Indians; 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. They shall determine the right of a tribe to take inherited interests and the fair market value of the interests taken in appropriate cases as provided by statute. They shall 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 officials of the Bureau of Indian Affairs.

[52 FR 32130, Aug. 26, 1987]

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

§4.203 Determination as to nonexistent persons and other irregularities of allotments.

(a) Administrative law judges shall 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 administrative law judge determines under paragraph (a) of this section that a trust patent did issue to an existing person or that separate persons did receive the allotments under consideration and any one of them is deceased, without having had his estate probated, he shall proceed as provided in § 4.202.

(c) If an administrative law judge determines under paragraph (a) of this section that a person did not exist or that there were more than one allotment issued to the same person, he shall issue a decision to that effect, giving notice thereof to parties in interest as provided in § 4.240(b).

[36 FR 7186, Apr. 15, 1971; 36 FR 7588, Apr. 22, 1971]

§ 4.204 Presumption of death.

(a) Administrative law judges shall receive evidence on and determine the issue of whether persons, by reason of unexplained absence, are to be presumed dead.

(b) If an administrative law judge determines that an Indian person possessed of trust property is to be presumed dead, he shall proceed as provided in § 4.202.

§ 4.205 Escheat.

Administrative law judges shall determine whether Indian holders of trust property have died intestate without heirs and—

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

(b) With respect to trust property on the public domain, shall submit to the Board of Indian Appeals the records thereon, together with their recommendations as to the disposition of said property under 25 U.S.C. 373b.

[36 FR 7186, Apr. 15, 1971, as amended at 55 FR 43132, Oct. 26, 1990]

§ 4.206 Determinations of nationality or citizenship and status affecting character of land titles.

In cases where the right and duty of the Government to hold property in trust depends thereon, administrative law judges shall determine the nationality or citizenship, or the Indian or non-Indian status, of heirs or devisees, or whether Indian heirs or devisees of U.S. citizenship are of a class as to whose property the Government's supervision and trusteeship have been terminated (a) in current probate proceedings or (b) in completed estates after reopening such estates under, but without regard to the 3-year limit set forth in § 4.242.

§ 4.207 Compromise settlement.

(a) If during the course of the probate of an estate it shall develop that an issue between contending parties is of such nature as to be substantial, and it further appears that such issue may be settled by agreement preferably in writing by the parties in interest to their advantage and to the advantage of the United States, such an agreement may be approved by the administrative law judge upon findings that:

(1) All parties to the compromise are fully advised as to all material facts;

(2) All parties to the compromise are fully cognizant of the effect of the compromise upon their rights; and

(3) It is in the best interest of the parties to settle rather than to continue litigation.

(b) In considering the proposed settlement, the administrative law judge may take and receive evidence as to the respective values of specific items of property. Superintendents and irrigation project engineers shall supply all necessary information concerning any liability or lien for payment of irrigation construction and of irrigation operation and maintenance charges.

(c) Upon an affirmative determination as to all three points specified, the administrative law judge shall issue such final order of distribution in the settlement of the estate as is necessary to approve the same and to accomplish the purpose and spirit of the settlement. Such order shall be construed as any other order of distribution establishing title in heirs and devisees and shall not be construed as a partition or sale transaction within the provisions of 25 CFR part 152. If land titles are to be transferred, the necessary deeds shall be prepared and executed at the