DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 15, 18, 179

Office of the Secretary

43 CFR Parts 4, 30

RIN 1076–AE59

Indian Trust Management Reform

AGENCY: Bureau of Indian Affairs, Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends several Bureau of Indian Affairs (BIA) and Office of the Secretary regulations related to Indian trust management in the areas of probate, probate hearings and appeals, tribal probate codes, and life estates and future interests in Indian land. This rule allows the Secretary to further fulfill his fiduciary responsibilities to federally recognized tribes and individual Indians and to meet the Indian trust management policies articulated by Congress in the Indian Land Consolidation Act (ILCA), as amended by the American Indian Probate Reform Act of 2004 (AIPRA).

DATES: This rule is effective on December 15, 2008.

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I. Statutory Authority

Regulatory amendments to these parts are promulgated under the general authority of the American Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. 4001 *et seq.*, and the Indian Land Consolidation Act of 2000 (ILCA) as amended by the American Indian Probate Reform Act of 2004 (AIPRA), 25 U.S.C. 2201 *et seq.* The following table provides additional statutory authority specific to each CFR part.

25 CFR part 15 5 U.S.C. 301, 503–504; 25 U.S.C. 2, 9, 372–74, 410, 2201 *et seq.*; 44 U.S.C. 3101 *et seq.*

25 CFR part 18 5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410, 2201 *et seq.*; 44 U.S.C. 3101 *et seq.*

25 CFR part 179 86 Stat. 530; 86 Stat. 744; 94 Stat. 537; 96 Stat. 2515; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201 *et seq.*

43 CFR part 4 5 U.S.C. 301, 503–504; 25 U.S.C. 9, 372–74, 410, 2201 *et seq.*; 43 U.S.C. 1201, 1457; Pub. L. 99–264, 100 Stat. 61, as amended.

43 CFR part 30 5 U.S.C. 301, 503; 25 U.S.C. 9, 372–74, 410, 2201 *et seq.*; 43 U.S.C. 1201, 1457.

II. Background

This rulemaking is a result of a collaborative, multi-year undertaking to identify a comprehensive strategy for improving Indian trust management. The Department of the Interior manages Indian trust assets in accordance with its trust relationship with tribes and individual Indians. The term ''tribes'' is used in this preamble to refer to federally recognized tribes. The purpose of today's final rulemaking is to allow the Department of the Interior to better meet its trust responsibilities and to carry out the policies established by Congress to strengthen tribal sovereignty. This rulemaking will provide the Department with the tools to more effectively and consistently manage trust assets and better serve its trust beneficiaries (i.e., Indian tribes and individual Indians).

A. History of the Rule

The Department of the Interior has been examining ways to better meet its trust responsibilities since 1994, when Congress passed the Trust Fund Management Reform Act. Throughout this time, the Department has sought the participation and input of tribal leaders and individual Indian beneficiaries to identify ways in which the Department can better serve its beneficiaries.

In July 2001, the Secretary of the Interior (Secretary) issued Secretarial Orders 3231 and 3232. These orders created the Office of Historical Trust Accounting (OHTA) to perform historical accounting of trust assets and created a temporary Office of Indian Trust Transition (OITT), which was charged with reorganizing the agency to better meet beneficiaries' needs. These Secretarial Orders also stated the Secretary's policy to take a more coordinated approach to ensure the overall success of trust reform.

In accordance with this policy, the Department reevaluated its approach to trust reform and, in January 2002, embarked on an examination and reengineering of its Indian trust management processes. This effort differed from prior trust reform efforts because it took a comprehensive approach to trust reform, linking individual trust reform issues to an overall strategy. To ensure that the strategy fully considered tribal concerns, the Department assembled a task force to work on trust reform and reorganization efforts.

From members of this task force, a subcommittee of both tribal

representatives and Department representatives was formed. The subcommittee met regularly to review the ''As-Is'' processes for performing major trust functions at that time. From this ''As-Is'' model, the subcommittee identified business goals and objectives the Department should meet in fulfilling its trust responsibilities and providing improved services to trust beneficiaries. These business goals and objectives provided strategic direction for development of the ''To-Be'' model, known as the Fiduciary Trust Model (FTM). The FTM redesigns trust processes into more efficient, consistent, integrated, and fiscally responsible business processes. In developing the FTM, the team incorporated years of Departmental consultation with tribes. The Department adopted the FTM in December 2004 to guide trust reform.

On August 8, 2006, the Department published a proposed rule at 71 FR 4517 which addressed the FTM's goals for regulatory changes to the probate process. Today's rulemaking finalizes the proposed rule, with changes addressing comments received during the public comment period.

B. The Need for This Final Rulemaking

Since adopting the FTM, the Department formed an FTM Implementation Team with tribal representatives. The FTM Implementation Team is leading internal organizational changes for improving performance and accountability in management of the trust. At the beginning of the reengineering process, the Joint Task Force had anticipated that regulatory changes would be necessary to fully implement trust reform. The Team has since determined, and the Secretary has confirmed, that certain regulatory changes are indeed needed to enable the Department to fully implement the FTM. Today's final rule includes many of these necessary regulatory changes.

Additionally, Congress enacted the American Indian Probate Reform Act of 2004. AIPRA amends ILCA to better meet the trust reform goals for land consolidation articulated in ILCA. Many of the regulatory changes within these rules reflect recent changes to the law by the enactment of AIPRA.

C. Development of Regulatory Language

This final rulemaking encompasses tribal and Departmental representatives' efforts who have provided comments throughout the trust reform process. These efforts guided in-house teams in drafting the specific regulatory language. The in-house teams consisted of Federal personnel from Department headquarters and the field, and included program officers and Department attorneys possessing extensive expertise in probate.

On December 27, 2005, the Department shared advance copies of the regulatory language (identified as ''preliminary drafts'' throughout this preamble) with leaders of each federally recognized tribal government, as well as additional contacts in Indian country, for their input and recommendations. The Department also presented the preliminary drafts and obtained the input of tribes at two formal consultation meetings: One in Albuquerque, New Mexico, on February 14–15, 2006, and one in Portland, Oregon, on March 29, 2006. Comments received during these consultations and in the time leading up to this publication have identified several issues that the Department considered in revising the preliminary drafts for publication as a proposed rule.

The Department published the proposed rule on August 8, 2006, at 71 FR 45173 and held additional tribal consultations in August 2006.

III. Overview of Final Rule

The final rule amends various parts of the CFR to further implement Indian trust management reform and ILCA, as amended by AIPRA. The Department is not yet finalizing 25 CFR part 150, Indian Land Title of Record, or 25 CFR 152, Conveyances of Trust or Restricted Indian Land, Removal of Trust or Restricted Status; however, the remaining proposed regulations, 25 CFR parts 15, 18, and 179, and 43 CFR parts 4 and 30 are being finalized today. Together, these amendments form an integrated approach to Indian trust management related to probates that allow the Department to better meet the needs of its beneficiaries. The amendments incorporate AIPRA changes to probate, promote consolidation and the reduction of fractionation of interests, and improve service to beneficiaries. The amendments also make changes in accordance with the Plain Language Initiative (63 FR 31885 (June 10, 1998)) to facilitate ease of use and public comprehension.

IV. Overview of Public Comments

As noted above, the Department held tribal consultations on this rule. A court reporter transcribed each comment made orally at these consultations. In addition, the Department received approximately 21 written comments via letter, facsimile, e-mail, and the comment entry form at *http://www.doitrustregs.com* during the formal comment period.

Publication of the proposed rule opened the original public comment period on August 8, 2006 (*see* 71 FR 45173). Comments were originally due by October 10, 2006. On November 1, 2006, the Department reopened the comment period for an additional 60 days to January 2, 2007 (*see* 71 FR 64181). The Department again reopened the public comment period on January 25, 2007, for an additional 60 days to March 12, 2007 (*see* 71 FR 3377).

Public comments ranged from the very general, regarding the Department's approach to tribal consultations, to the very specific, regarding the language used in a particular proposed regulation. The Department reviewed and discussed each written and transcribed comment at intra-Departmental workgroup meetings held in Albuquerque, New Mexico, the week of March 19, 2007, and continued to refine the regulations throughout the following year. Through close coordination among the members, the workgroups drafted changes to the regulations as appropriate to address comments.

V. Part-by-Part Discussion

The following sections provide a summary of public comments on the proposed rule and changes the final rule makes to the proposed rule. The following sections also provide distribution tables showing where general content in the current rule can be found in the final rule, by listing the current CFR sections that the final rule amends and the new CFR sections. For a description of changes made to the preliminary drafts, which were distributed to tribes in December 2005 and incorporated into the proposed rule, refer to the proposed rule at 71 FR 45173 (August 8, 2006).

This preamble does not specifically address all non-substantive changes or editorial wording changes.

A. 25 CFR Part 15—Probate of Indian Estates

The purpose of this part is to describe the authorities, policies, and procedures the BIA (or tribe that has contracted or compacted to fulfill probate functions) uses to prepare a probate file for an Indian decedent's trust estate, except for restricted land derived from allotments made to members of the Osage Nation and the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole).

1. Public Comments

a. Applicability to Alaska

One commenter requested that the Department clarify the applicability of this part to Alaska. The Department has added such clarification at section 15.1(b).

b. Definitions

Several commenters questioned how eligibility for membership in a tribe is determined in the context of whether someone meets the definition of ''Indian.'' AIPRA established a new definition of ''Indian,'' which now includes persons eligible for membership in any Indian tribe. See 25 U.S.C. 2201(2)(A). Part 15 incorporates this new definition in its definition of ''Indian'' in section 15.2 and by requiring information regarding eligibility for membership in an Indian tribe to be included in the probate file under section 15.202. The tribe determines its own membership. BIA will need information from the tribes on their eligibility requirements; however, BIA will not require tribal certification as to a particular person's eligibility. Once the information is sent to the Office of Hearings and Appeals (OHA), the judge will apply the tribe's enrollment standards during the probate process in order to determine who may inherit. The judge's determination as to eligibility for probate purposes does not affect the tribe's determination as to membership.

One commenter asked whether a person would be considered ''eligible for membership'' in an Indian tribe if the tribe's code prevents inheritance. Eligibility for membership relates only to the definition of ''Indian'' under AIPRA and is a separate issue from whether, under a tribe's code, a particular class of people may inherit.

Another commenter suggested adding a definition for ''testator.'' The Department has added this definition in section 15.2.

Two commenters pointed out that the definition of ''trust personalty'' in the proposed rule would not include reindeer subject to the Reindeer Act of 1937, as amended, 50 Stat. 900; 25 U.S.C. 500–500n, or fossils removed from trust land over which the Secretary has trust responsibility. The Department has amended the definition of ''trust personalty'' in the final rule to include personal property that may be subject to Secretarial supervision, such as the ''trust reindeer.'' This amendment does not expand Secretarial obligations, but merely recognizes existing obligations.

One commenter stated that BIA is mentioned in several headings, but the definition of BIA does not include tribes that are contracting or compacting the probate function. The Department has reviewed the headings to ensure that the more general term ''agency'' is used when appropriate to include contracting or compacting tribes acting in place of BIA in performing the preparation of the probate package. Additionally, the text of the section clarifies the actor through the use of ''we'' and ''us,'' which are defined as including contracting and compacting tribes.

One commenter requested a new definition for ''testamentary capacity.'' Because testamentary capacity is a determination made by the judge, the Department does not believe a definition is appropriate here.

One commenter noted that, in section 15.201, using the term ''we'' when identifying who will transfer the probate file to OHA is ambiguous. The Department again points the commenter to the definition of ''we'' as including contracting and compacting tribes.

c. Claims

One commenter asked whether proposed section 15.202 (final sections 15.302 through 15.305), which allows the use of trust personalty to satisfy claims, also allows land to be sold to satisfy claims against the estate. The answer is no, land interests cannot be sold to satisfy claims against the estate.

Another commenter asked whether statutes of limitations may bar claims against an Indian estate. Statutes of limitations do apply to claims against Indian estates. If the statute of limitations on a claim has already run, the creditor cannot resurrect the claim during probate of the estate.

Certain kinds of claims are barred altogether. For example, claims by States and counties are barred (e.g., if a State seeks reimbursement of welfare assistance). Claims for unliquidated damages or unliquidated claims are barred because the Department does not have jurisdiction to determine those claims or pay them out of trust assets. See 43 CFR 30.143, below.

Several commenters asked whether an assignment of income would be considered a claim or would continue with the land. An assignment is not the same as a debt, but is a manner or method of payment of a debt. Whether an assignment of income survives a decedent, or does not survive a decedent but may be relevant to the allowance of a claim against the estate, depends on the specific language of the assignment and debt instrument. In some cases, an assignment of income is a personal act of the assignor and upon the death of the assignor, the assignment dies. The underlying debt could be the basis of a claim against the estate, if a balance remains unpaid. The final provision at 43 CFR 30.146 makes it clear that claims may be paid only from intangible trust personalty in a decedent's IIM account or due and payable to the decedent on the date of death. However, if the decedent entered into a valid assignment of income from specific identified trust property, if the assignment specifically provides that it survives the decedent, and if the assignment was approved by the Secretary, the trust property affected by the assignment would likely pass subject to the assignment and would not be subject to the limitation that applies to claims. Similarly, trust property that is subject to a mortgage passes to the heirs or devisees subject to that mortgage.

d. Timeframes

Several commenters addressed the current delay in probating Indian estates and requested the inclusion of timeframes for preparation of the probate package by BIA (or the contracting or compacting tribe). During the probate process, many factors can affect the timing, including cooperation by tribes, family members, and probable heirs and the availability of Departmental resources. The Department decided not to include deadlines for preparation of the probate package because each case is unique; some cases require more time to compile the necessary information, while others require less. We have added a timeframe that once the probate package is complete, it will be forwarded to OHA within 30 days (section 15.401).

One commenter stated that the 30-day appeal time provided in section 15.403 is too short given that addresses may change, mail may need to be forwarded, and individuals may not understand the need to speak with a tribal or BIA representative about the implications of a decision. The Department weighed the interests of those who may want to appeal and the potential for circumstances such as those identified by the commenter against the interests of those waiting for distribution of the probated assets. Based on this weighing of interests, the Department determined that 30 days is a reasonable amount of time.

e. AIPRA

Several commenters had miscellaneous questions and comments regarding the statutory language and effect of AIPRA. For example, one commenter expressed concern that

AIPRA may allow interests to be inherited by non-Indians. In response, the Department notes that AIPRA prevents land from leaving trust status through intestacy and points the commenter to the definitions of ''Indian'' (25 U.S.C. 2201(2)) and ''eligible heirs'' (25 U.S.C. 2201(9)).

Another commenter requested clarification of the phrase ''lineal descendants within two degrees of consanguinity'' in AIPRA's definition of ''eligible heirs.'' A child or grandchild would be a lineal descendant within two degrees of consanguinity of a decedent.

One commenter asked about the threshold for interests to be subject to purchase at probate without consent. AIPRA is clear in stating that consent is not required where the interest passing to the heir intestate is less than 5 percent. See 25 U.S.C. 2206(o)(5). Section 15.202(e)(2) establishes that the probate file will include an inventory of, among other things, interests that represent less than 5 percent of the undivided interest in a parcel.

One commenter suggested that section 15.401, which provides that tribes will receive notice of a prepared probate package only for interests that are less than 5 percent, should include large interests because the tribe may want to exercise a purchase option, particularly where the land might go out of trust or be inherited by a non-tribal member. The tribe can obtain information on ownership of trust interests at any time, pursuant to 25 U.S.C. 2216(e). Additionally, OHA will provide the tribe with jurisdiction with notice of the formal probate proceeding for all probate cases in which the decedent died on or after June 20, 2006, pursuant to 43 CFR 30.213 and 30.214.

A commenter noted that several of the ''2 percent or less'' interests that escheated to the tribes under the ILCA provision that was ruled unconstitutional in *Youpee* v. *Babbitt,* 519 U.S. 234 (1997), have yet to be returned to the estates from which they were taken. This commenter stated that it is difficult to determine whether a decedent's interest is less than 5 percent for the purposes of AIPRA's single heir rule, given that many of these ''2 percent or less'' interests have not yet been returned. The Department recognizes that this is an issue. The Department is addressing this issue and is tracking progress in returning the ''2 percent or less'' interests. Nevertheless, the single heir rule is a statutory requirement of AIPRA and not subject to modification in these regulations.

f. Will Drafting and Storage

Two commenters suggested including a provision in part 15 authorizing the use of electronic copies of wills, codicils, and revocations. Probate of electronic wills and related documents is not an accepted judicial practice at this time; however, should it become an accepted practice in the future, the Department will reconsider this suggestion.

Several commenters questioned why the Department is no longer providing will-drafting services to Indians or accepting wills for storage. Part 15 does not address will-drafting services or will storage; however, the Department will address this comment here, given its relevance. The Department's April 21, 2005 policy on wills and estate planning services discontinues the Department's practice of assisting Indians in preparing wills by acting as a scrivener. This policy also discontinues the Department's practice of accepting wills for storage. The Department will continue to store those wills that were in our possession as of April 29, 2005. However, the Department has elected not to exercise our discretionary right to continue accepting and storing any wills not in our possession as of April 29, 2005. A testator may keep his or her will with other important papers or give it to someone else to store safely. Family members or others with access to the will should present it to BIA upon the death of the testator.

A commenter asked to change section 15.3 to eliminate or provide exceptions to the requirement that a person be 18 years of age or over to make a will disposing of trust or restricted land or trust personalty. The Department reviewed this request and determined that the Secretary does not have the authority to change the age requirement because it is statutorily established. *See* 25 U.S.C. 373.

g. Miscellaneous

One commenter stated that requiring a birth certificate as part of the probate file creates a hardship. The Department recognizes that many people do not have a birth certificate, and therefore has deleted the requirement for a birth certificate to be included in the probate file.

One commenter suggested amending section 15.202 to require appraisal information as part of the probate file, in support of purchases at probate or settlement agreements. The Department has determined that it is more efficient for OHA to request appraisal information on an as-needed basis than to require an appraisal in support of every probate.

Several commenters asked whether the decedent's family has access to the probate file. Access to the probate file is governed by the Privacy Act insofar as the file contains personal identifying information of living persons, such as heirs or devisees. These commenters also stated that section 15.504 is unclear because the language does not appear to respond to the heading ''Who may inspect these records?'' The Department has revised the heading to better address the content of this provision.

One commenter asked how often a claim to recover the costs of searching for an absent interest owner by an independent firm would occur, under section 15.106(d). The purpose of this provision is to allow for a determination as to whether an interest owner is deceased, and if so, connect heirs and devisees to property. Whether an estate is charged for a search will depend on the size of the estate. BIA decides whether it will conduct that search in any particular case. Ultimately, OHA will decide on a case-by-case basis whether a search would be chargeable as a cost of administration of the estate.

One commenter noted that part 15 does not address handwritten wills and asked whether the Department will accept them. The Department will accept a will that is handwritten, but it still must meet the minimum formalities of execution: A testamentary instrument signed by the testator, dated, and witnessed by two disinterested adults. See 25 CFR 15.4. The same commenter asked whether tribal notaries may notarize signatures even if the tribe has a statutory option to purchase. The fact that the notary is a tribal employee does not disqualify that person from serving as a notary, because the notary only acknowledges the signatures. However, the two witnesses under section 15.4 must be disinterested.

Several commenters asked whether Mutual Help houses are probated by OHA. ''Mutual Help'' refers to housing grants from the U.S. Department of Housing and Urban Development administered by Indian housing authorities. There may be circumstances in which a Mutual Help house would be probated by OHA.

2. Changes From the Proposed Rule

The Department amended the title of part 15 to reflect established statutory law that, in effect, exempts members of the Osage Nation from part 15.

To improve the organization, the Department switched the order of subparts C and D, since preparation of the probate file logically comes before

obtaining emergency assistance and filing claims. The Department also moved proposed section 15.505 to final 15.203, and renumbered proposed 15.303 to become final 15.204 and proposed 15.506 to become final 15.505. Proposed section 15.505 relates to information the tribe must provide to complete the probate file, which fits better in subpart C (''Preparing the Probate File''), than with provisions relating to records.

In section 15.1, the Department clarified applicability of the rule to Alaska.

In section 15.2, the Department added definitions for ''affidavit'' and ''testator'' in response to a public comment. The Department also clarified that ''child'' includes natural children, clarified ''eligible heir'' and ''Indian'' by adding an ''or'' in each, clarified ''will,'' and clarified ''you'' by defining interested parties as the universe of persons that may be referred to by this term. The Department added a definition for ''lockbox'' in response to a comment.

In section 15.9, the Department changed the wording to allow a person to either swear or affirm.

In section 15.104, the Department made editorial changes to clarify the requirement for a death certificate or certified copy of a death certificate, and to specify the contents of an affidavit provided in lieu of a death certificate.

In section 15.202 (proposed section 15.302), the Department deleted the reference to BIA's querying sources, since the focus of the section is on the content of the probate file, not BIA's process for assembling the probate file. Final section 15.204 covers BIA's obligation with respect to querying sources.

In section 15.301, the Department deleted paragraphs (c)(2) and (c)(3) because these factors, ''the number of potential heirs or devisees'' and ''the amount of any claims against the estate,'' respectively, are not routinely considered in determining whether to approve expenditures from an IIM account to cover burial costs.

In sections 15.302 through 15.305, the Department clarifies how to file claims in formal probate proceedings and summary probate proceedings, in response to comments. The Department clarifies that creditor claims may be filed with the agency (which includes compacting and contracting tribes) before the agency transfers the probate file to OHA. After the file is transferred, claims may be filed with OHA. In any formal proceeding, claims must be filed before the conclusion of the first hearing at OHA. Section 15.305 now also specifies that an affidavit must include a statement as to whether the creditor or anyone on behalf of the creditor has filed a claim or sought reimbursement against the decedent's trust or restricted property in any other judicial or quasi-judicial proceeding, and the status of such action.

Section 15.305(a)(5) is reworded to require the creditor to disclose any evidence that the decedent disputed the amount of the claim.

In section 15.403, the Department adds a cross reference to 43 CFR parts 4 and 30 and restates that, after a judge's decision on rehearing, a person may file an appeal within 30 days of the date of mailing the decision.

In section 15.501, the Department added ''OHA'' as a source for information on the status of a probate. The Department also removed the telephone number for the Trust Beneficiary Call Center (888–678–6836, ext. 0) in this section and in section 15.103 because any future change in the telephone number would have required a regulatory amendment.

3. Distribution Table—25 CFR Part 15

The following distribution table indicates where each of the current regulatory sections in 25 CFR part 15 is located in the final 25 CFR part 15.

Current citation	New citation	Title
15.1	15.1	What is the purpose of this part?
15.2	15.2	What definitions do I need to know?
	15.3	Who can make a will disposing of trust or restricted land or trust personalty?
	15.4	What are the requirements for a valid will?
	15.5	May I revoke my will?
	15.6	May my will be deemed revoked by the operation of the law of any State?
	15.7	What is a self-proved will?
	15.8	May I make my will, codicil, or revocation self-proved?
	15.9	What information must be included in an affidavit for a self-proved will, codicil, or revocation?
15.3	15.10	Will the Secretary probate all the land or assets in an estate?
15.4	15.11	What are the basic steps of the probate process?
	15.12	What happens if assets in a trust estate may be diminished or destroyed while the probate is pending?
15.101	15.103	How do I begin the probate process?
	15.104	Does the agency need a death certificate to prepare a probate file?
15.102	15.102	Who may notify the agency of a death?
15.103	15.101	When should I notify the agency of a death of a person owning trust or restricted property?
15.104, 15.105	15.105	What other documents does the agency need to prepare a probate file?
15.106	15.301	May I receive funds from the decedent's IIM account for funeral services?
15.107	15.107	Who prepares the probate file?
15.108	15.108	If the decedent was not an enrolled member of a tribe or was a member of more than one tribe, who prepares the probate file?
	15.106	May a probate case be initiated when an owner of an interest has been absent?
15.201	15.201	What will the agency do with the documents that I provide?
15.202	15.302	May I file a claim against the estate?
	15.303	Where may I file my claim against an estate?
	15.304	When must I file my claim?
	15.305	What must I include with my claim?
15.203	15.202	What items must the agency include in the probate file?
	15.203	What information must tribes provide BIA to complete the probate file?
	15.204	When is a probate file complete?
15.301	15.401	What happens after BIA prepares the probate file?
15.302	15.402	What happens after the probate file is referred to OHA?
15.303	15.403	What happens after the probate order is issued?
15.401	15.501	How may I find out the status of a probate?
15.402	15.502	Who owns the records associated with this part?

Current citation	New citation	Title
15.403	15.503	How must records associated with this part be preserved?
	15.504	Who may inspect records and records management practices?
	15.505	How does the Paperwork Reduction Act affect this part?

B. 25 CFR 18—Tribal Probate Codes

This new CFR part addresses the process for obtaining Secretarial approval of a tribal probate code and lists factors the Secretary will consider in reviewing the tribal probate code for approval.

1. Public Comments

a. Applicability to Alaska

At least one commenter noted that Alaska tribes may enact tribal probate codes, but that AIPRA does not apply. Part 18 does not apply to Alaska lands.

b. Adjudication Functions

One commenter asked whether a tribe can contract the probate adjudication functions. While tribes may contract probate file preparation (the BIA function), tribes cannot contract the adjudication function (the OHA function) because the adjudication function—determining ownership of trust land, title to which is held by the United States for the benefit of tribes and individual Indians—is an inherently Federal function. In adjudicating probates, OHA will apply a tribal probate code so long as it is consistent with Federal law and approved pursuant to AIPRA where applicable.

c. 180-Day Time Periods

Several commenters stated that they believe the 180-day period for the Department to review and come to a decision whether to approve the code is excessive. These commenters point out that ILCA, as amended by AIPRA, establishes 180 days as an absolute deadline for the Department to come to a decision, but does not prevent the Department from establishing a shorter timeline. The Department is exercising the authority granted by Congress to take up to 180 days to review tribal probate codes. See 25 U.S.C. 2205(b)(2)(A).

Several commenters stated that they believe the second 180-day period—from approval of the tribal probate code to when the code may become effective—is also excessive. ILCA, as amended by AIPRA establishes that the tribal probate code may not be effective for 180 days following approval to allow tribal members adequate opportunity to amend their wills. See 25 U.S.C. 2205(b)(3). One commenter asked when those provisions of a tribal probate code that do not require Secretarial approval will become effective. Part 18 addresses only those sections of a tribal probate code dealing with trust property. The 180-day time period applies only to the provisions dealing with trust property. All other provisions may become effective at the time prescribed by the tribe.

d. Single Heir Rule

One commenter asked whether tribal probate codes must provide that interests less than 5 percent must pass in accordance with the single heir rule. Section 2205 of ILCA, as amended by AIPRA, says the code must be consistent with the goals of ILCA. One of those goals is to reduce fractionation; therefore, no more than one individual can inherit less than 5 percent of the total undivided ownership in a parcel through intestacy. Under AIPRA, the single heir rule does not apply to interests that are 5 percent or greater or interests devised through a will. The Department also clarified in final section 18.301 that a tribe may adopt a single heir rule without adopting a full tribal probate code. Another commenter noted that ILCA, as amended by AIPRA, allows tribes to adopt a single heir rule that distributes to a different single heir from that designated by statute. The Department clarified this point in final section 18.301. Another commenter asked what timelines apply to single heir rules submitted separately from, or without, a tribal probate code. The Department has added subpart D to address this comment.

e. Miscellaneous

One commenter stated that part 18 should be revised to expressly limit the Department's review of sections of the tribal probate code that govern trust and restricted lands. The Department has added sections 18.103 and 18.203 to clarify which provisions of a tribal probate code are subject to its approval.

At least one commenter questioned whether the commenter's specific tribe may enact a tribal probate code. Congress enacted some statutes specific to tribes. Nothing in AIPRA amends or otherwise affects the application of the tribe-specific laws addressed in 25 U.S.C. 2206(g). However, a tribe may use AIPRA and its Congressionally enacted statute to develop and adopt its own probate code.

Several commenters noted that, in final section 18.106, the provision stating that a tribal probate code must allow an Indian lineal descendant of the original allottee and an Indian who is not a member of the Indian tribe with jurisdiction over the interest in land to ''inherit'' is inaccurate, because ILCA, as amended by AIPRA, states that the tribal probate code must allow such persons to receive by will (i.e., by devise). The Department agrees with this comment and has incorporated the change in section 18.106(c) and (d).

One commenter stated that the proposed section 18.4, which had stated that the tribal probate code be submitted to the local Bureau official, was not specific enough. The Department has responded by including the specific address to which tribal probate codes should be submitted at section 18.105, and has changed the recipient to Central Office rather than local Bureau officials.

A few commenters requested more guidance as to what parts of a tribal probate code are subject to Secretarial approval. Final part 18 clarifies that only those tribal probate codes containing provisions regarding the descent and distribution of trust or restricted lands require and are subject to Secretarial approval. The Department published a model tribal probate code in the **Federal Register** to provide suggested guidelines for tribes considering the creation and adoption of a tribal probate code containing provisions applicable to trust and restricted property. *See* 72 FR 54674 (September 26, 2007).

One commenter stated that proposed 25 CFR 18.3(c)(2) was inconsistent with AIPRA. The commenter pointed out that this regulation allowed a spouse or a lineal descendent of either the testator or the original allottee to reserve a life estate. The commenter noted that including descendents of the original allottee in 25 CFR 18.3(c)(2) as eligible to reserve a life estate under a tribal probate code expands the class of persons contemplated by AIPRA. The Department agrees with this comment and has deleted the reference to descendents of the original allottee in 25 CFR 18.3(c)(2).

AIPRA does not allow a tribal probate code to prohibit the devise of an interest in trust or restricted property to an

Indian lineal descendent of the original allottee or an Indian who is not a member of the tribe with jurisdiction over the interest in land unless the following conditions are met: (1) The code allows those individuals to renounce their interests to eligible devisees in accordance with the tribal code; (2) the code allows a devisee spouse or lineal descendant of the testator to reserve a life estate without regard to waste; and (3) the code requires the payment of fair market value as determined by us on the date of the decedent's death. The final rule complies with AIPRA. The relevant provisions are now found at 25 CFR 18.106(c) and (d).

2. Changes From the Proposed Rule

The Department reorganized the proposed rule, by separating into three distinct subparts provisions related to tribal probate codes, amendments to tribal probate codes, and single heir rules submitted separately from tribal probate codes. This reorganization should allow users to more readily locate the provisions they are interested in.

The Department also changed who tribes should submit their tribal probate codes to, requiring them to submit to Central Office, rather than local Bureau officials. This allows a specific address to be included, as requested by a commenter. The Department also added several additional sections for further clarification. For example, the Department added a new section 18.1 to make the purposes of part 18 explicit. The Department also clarifies that a tribe must obtain approval of the tribal probate code only if the code governs descent and distribution of trust and restricted lands (see final sections 18.101 and 18.102). The Department added a new section 18.103 to clarify which provisions of a tribal probate code are subject to the Secretary's approval.

In response to comments, the Department added a new subpart D to clarify that a tribe may enact a single heir rule without enacting a tribal probate code and to clarify the approval timeline for a single heir rule that is not part of a tribal probate code.

To make the approval process more transparent, the Department also clarified what the Secretary will consider in the approval decision (see final section 18.106) and the procedure for obtaining Secretarial approval of amendments to tribal probate codes (see subpart C).

The Department deleted proposed 18.12(b) regarding appeals of a denial by the Assistant Secretary—Indian Affairs to the Board of Indian Appeals because the Board generally lacks authority to review decisions of the Assistant Secretary, and even if such authority were granted, the time limits imposed by AIPRA essentially exclude the possibility of review by the Board.

In final sections 18.110, 18.207, and 18.306, the Department clarifies when a tribal probate code, amendment, and single heir rule, respectively, becomes effective if it is approved by the Department's inaction.

Note: A distribution table is not included here because these provisions are new.

C. 25 CFR Part 179—Life Estates and Future Interests

This part sets forth the authorities, policy, and procedures governing the administration by the Secretary of life estates and future interests in Indian lands. Many of the provisions are effective only in the absence of language to the contrary in the document creating the life estate (i.e., probate order or conveyance document).

1. Public Comments

The public comments on proposed 25 CFR part 179 overwhelmingly objected to the proposed revisions as confusing. The public comments stated that such confusing language makes it difficult for people to ensure that their property will be distributed in accordance with their intent when their will or conveyance includes life estates and future interests. For this reason, the Department has decided not to adopt most of the changes it proposed, with a few exceptions.

Commenters also objected to the apparent prohibition on successive life estates. The Department has decided not to adopt the proposed changes that would have prohibited successive life estates.

Additionally, several commenters objected to the provisions at proposed section 179.8 stating that members of a class are determined at the time a conveyance document is approved or at the death of decedent. Commenters objected to these provisions because ILCA, as amended by AIPRA, explicitly states that the time for ascertaining a class is the time the devise is to take effect in enjoyment. Likewise, commenters objected to proposed section 179.7 establishing that the Department will determine whether a condition is satisfied upon the Department's approval of the conveyance document or upon the death of the decedent. The Department has not adopted these proposed provisions.

Commenters also objected to limiting rights to dispose of property in probate or by gift. The Department has decided not to adopt the changes it proposed that would have limited rights to dispose of property in probate or by gift.

One commenter asked whether mineral rights could be given as a life estate, without rights to the surface. In a will, a testator may devise a life interest in the mineral estate and may define the extent of damage the life tenant may do. This rule only establishes guidelines in the absence of the language in the document establishing the life estate.

Another commenter asked whether a person holding a life estate ''without regard to waste'' is entitled to harvest timber without the consent of the remaindermen. The Department has added a new section 179.202 to address this and other situations regarding depletion of resources.

A few commenters asked about the meaning of the phrase ''without regard to waste.'' AIPRA established the definition and the Department is bound by its applicability.

2. Changes From Proposed Rule

As stated above, in response to comments, the Department has not adopted most of the changes it proposed, with a few exceptions. In section 179.1, the Department clarified the scope and purpose of part 179, establishing three separate subparts. In section 179.2, the Department reinserted a definition for ''agency,'' clarified that agency includes compacting and contracting tribes, and retained an amended version of ''life estate.'' In addition, the Department added definitions for ''life estate without regard to waste'' and ''rents and profits.'' In section 179.3, the Department clarifies the application of law to include AIPRA. The Department also added a new section 179.4 to clarify how a life estate terminates.

The Department has retained the proposed use of Actuarial Table S in proposed section 179.13 (now in final section 179.102) rather than the table in the currently effective version of part 179, and has retained the explanatory paragraph stating that the Department will periodically review and revise the rate of return. The Department has also retained a revised version of the provision in proposed section 179.12(b) (now in final section 179.201) establishing distribution for life estates without regard to waste.

The Department has deleted proposed provisions related to classes and proposed provisions regarding the privileges and responsibilities of a life

tenant. The Department also deleted proposed section 179.11, regarding how a future interest holder can stop a life tenant from damaging or substantially diminishing the future interest, because the Department is already authorized as trustee to take action where appropriate.

3. Distribution Table—25 CFR Part 179

The following distribution table indicates where each of the current regulatory sections in 25 CFR part 179 is located in the final 25 CFR part 179.

Current citation	New citation	Title
179.1	179.1	What is the purpose of this part?
179.2	179.2	What definitions do I need to know?
179.3	179.3	What law applies to life estates?
	179.4	When does a life estate terminate?
179.4	179.101	How does the Secretary distribute principal and income to the holder of a life estate?
179.5	179.102	How does the Secretary calculate the value of a remainder and a life estate?
179.6	179.5	What documents will the BIA use to record termination of a life estate?
	179.201	How does the Secretary distribute principal and income to the hold of a life estate without regard to waste?
	179.202	Can the holder of a life tenancy without regard to waste deplete the resources?

D. 43 CFR Part 4, Subpart D—Department Hearings and Appeals Procedures, Rules Applicable in Indian Affairs Hearings and Appeals

Currently, subpart D of 43 CFR part 4 addresses how OHA probates a trust estate after receipt of the probate file that BIA prepares under 25 CFR part 15. The amendments relocate the probate hearing procedures to a new part 30 and amend these procedures to improve clarity and to include new provisions implementing ILCA, as amended by AIPRA. See the discussion of these changes below.

E. 43 CFR Part 30—Indian Probate Hearings Procedures

This newly established part addresses probate hearing procedures.

1. Public Comments

a. Applicability to Alaska

One commenter requested that the Department clarify the applicability of this part to Alaska. The Department has added such clarification at section 30.100(c).

b. Claims

One commenter asked whether legal notice to creditors is still required, and noted that the BIA staff will not know the deadline for submitting claims, since it is now the date of the first hearing. Creditors will receive constructive or actual notice by OHA of the first hearing, either by posting of the notice of hearing or by mailing of the notice to creditors whose claims were presented to BIA prior to transfer of the probate file to OHA. Creditors may still file their claims with the BIA prior to transfer of the probate file to OHA, and BIA staff will know whether the file has been transferred, in which case they can refer the creditor to OHA for more information about the filing.

One commenter asked whether a mortgage is a claim against an estate. The Department treats the mortgage as an encumbrance on the land. The trust property will pass through the estate encumbered by the mortgage.

Several commenters asked whether various loans or assignments would be considered claims against the estate. See the discussion of ''Claims'' under 25 CFR part 15, above, for information on assignments. One commenter asked specifically whether a loan for which a lien on farming equipment is placed would be a claim in probate. A loan secured by farming equipment is not a trust probate issue because the equipment is not trust property. Under these regulations, the creditor must exhaust the security and must show evidence of any balance due after the exhaustion of the security before making a claim against trust assets. See final 25 CFR 15.305(c) and 43 CFR 30.141. Another commenter asked specifically whether claims for child support or alimony are claims against an estate. If liquidated under the applicable State or tribal law, claims for alimony or child support may be considered as general claims against the estate.

One commenter objected to section 30.144 to the extent it would allow BIA to petition for costs of administering an estate because it is BIA's trust responsibility to do so. This section allows the judge the discretion to authorize payment of costs of administering the estate where the judge deems it appropriate under specific circumstances; the Department does not anticipate that judges will routinely authorize payment to BIA.

One commenter recommended changing the word ''personalty'' to ''funds'' in section 30.146 because money generated after the date of death is generated from the land and goes with those heirs vested in the land. The Department agrees that money generated after the decedent's death belongs to the heirs or devisees, but it is still ''trust personalty.'' Trust personalty that accrues after the date of the decedent's death from trust or restricted property is not available for payment of claims against the estate.

The discussion of comments on claims under 25 CFR part 15, at section V.A(1)(c) of this preamble, above, provides additional information on probate claims.

c. Timeframes

Several commenters suggested adding timeframes to various parts of the probate process, including when OHA receives the probate file from BIA, notifies potential heirs or devisees, takes action to complete an incomplete probate file, provides notice of the hearing, schedules and holds hearings, and allows document discovery. One commenter suggested that certain classes of probate cases should be completed within certain timeframes. The Department decided not to add timelines for adjudication of probate estates because each case is unique, some requiring more time and some requiring less. During the probate process, many factors can affect the timing, including cooperation by tribes, family members, and probable heirs and devisees and the availability of Departmental resources.

A few commenters stated that the 30 days provided for filing a notice of appeal in 4.321 is not long enough because someone may not know of the decision in time, or decide to appeal in time. The Department weighed the interests of those who may want to appeal against the interests of those waiting for distribution of the probated assets and determined that 30 days was an appropriate time period. Provisions have been added to the regulations requiring the deciding official to give notice to the parties of their rights to further review or appeal, and providing that the review or appeal period runs

from the mailing of a notice, decision, or order (i.e., one that includes accurate appeal information).

d. AIPRA

One commenter asserted that AIPRA conflicts with the Indian Child Welfare Act regarding adopted-out children. AIPRA does not necessarily cut off the rights of adopted-out heirs. Even though a child has been adopted out by the mother (in this case, if the mother gave the child up for adoption), if the grandmother continued to maintain a relationship with that child, the child could inherit from the grandmother. See 25 U.S.C. 2206(j)(2)(B)(ii) and (iii). Another commenter stated that AIPRA's ''adopted-out heirs'' provisions are too vague. The regulations reflect AIPRA as enacted; however, tribes may adopt tribal standards for inheritance by adopted children in their tribal probate codes.

One commenter asked whether interests owned by persons who do not respond to notices may be sold without their consent. AIPRA allows certain interests to be sold during probate without the consent of the owner. See 25 U.S.C. 2206(o), as implemented by 43 CFR part 30, subpart G (Purchase at Probate).

One commenter asserted that abusive spouses should not be eligible to inherit. AIPRA provides no basis for disinheriting an abusive spouse, except in the extreme case where death results. Under 25 U.S.C. 2206(i), any person who knowingly participated, either as a principal or accessory before the fact, in the willful and unlawful killing of the decedent may not take any inheritance or devise.

One commenter asked how AIPRA affects mineral rights. AIPRA governs the descent and distribution of mineral rights to the same extent as other property rights.

Several commenters suggested that the Department has the ability to interpret AIPRA, in support of various regulatory changes. The Department has based these regulations on AIPRA, as enacted.

e. Purchase at Probate

Several commenters expressed concern regarding the purchase at probate provisions allowing interests to be sold without the owner's consent. ILCA, as amended by AIPRA, authorizes the sale without consent of interests passing intestate that represent less than 5 percent of the entire undivided ownership in the parcel. See 25 U.S.C. 2206(o)(5). One commenter asked whether such a sale without the owner's consent is constitutional. These regulations implement the statute as enacted. The Department notes that all sales under these regulations require that the owners be compensated at fair market value.

Another commenter stated that the sale of property, even property of small economic value, without the owner's consent is contrary to well-established principles of property law and, as such, should be strictly limited. This commenter stated the concern that section 30.163 is an ill-concealed effort to increase the number of forced sales at probate. As previously stated, the regulations interpret AIPRA as enacted, which allows for purchase without consent of an interest passing by intestate succession, where the ''interest passing to such heir represents less than 5 percent of the entire undivided ownership of the parcel.'' See 25 U.S.C. 2206(o)(5).

Another commenter noted that, in some areas, even an interest less than 5 percent may be very profitable and stated that such interests should not be subject to purchase at probate without the owner's consent. The regulations interpret AIPRA as enacted, which allows purchase at probate of interests of less than 5 percent without the owner's consent; however, the production of income from an interest would be considered in arriving at a valuation in the purchase at probate process. Valuation can be contested by interlocutory appeal before the interest is ordered sold. See 43 CFR 30.169.

A few commenters expressed concern that a sale of an interest is not actually taking place during the probate because the heir or devisee only has an expectancy, and his or her ownership in the interest does not vest until the final probate order. According to one of these commenters, the regulation creates a ''fictional interest'' (because the interest is merely an expectancy). The regulations apply the purchase at probate provisions of AIPRA as enacted. AIPRA does not distinguish between an expectancy and vested interest for the purposes of purchases at probate.

Several commenters expressed dissatisfaction with the fact that whether an interest may be purchased without the owner's consent is measured by what percentage interest passes to the heir, rather than what percentage interest the decedent owned. In other words, these commenters believe that purchase without consent should be allowed only where the decedent owned a less than 5 percent undivided interest, rather than where the heir receives a less than 5 percent interest. For example, if a decedent owns a 20 percent interest and has five heirs, each receiving a 4 percent interest, then the concern is that the entire 20 percent interest would be subject to purchase at probate without those heirs' consent. The Department agrees that this situation could occur. The regulations apply AIPRA as enacted, which allows for purchase without consent of an interest passing by intestate succession, where the ''interest passing to such heir represents less than 5 percent of the entire undivided ownership of the parcel.'' See 25 U.S.C. 2206(o)(5).

One commenter asked when any relevant appraisal information for a purchase at probate would be obtained by interested parties. BIA or the judge will order an appraisal or other valuation when a request for purchase is submitted.

A few commenters stated that the 30 days provided for filing a notice of objection to an appraisal in section 30.169 is not long enough. The Department weighed the interests of those who may want to object against the interests of those waiting for distribution of the probated assets and determined that 30 days was an appropriate time period. Many of these same commenters stated that the 30 days should be measured from the date of receipt, rather than the date of mailing, of the notice. The Department decided against measuring from the date of receipt because of the cost of various methods of delivery confirmation (certified or registered mail or priority mail with delivery confirmation). The Department therefore clarified that time periods are measured from the date of mailing in this section, as well as in other sections throughout this part.

One commenter asked whether a deed would be drafted as part of the purchase at probate process. The probate order would take the place of the deed in the purchase at probate.

One commenter asked whom the Department will notify of a purchase at probate. Section 30.165 establishes whom the Department will notify of a request to purchase at probate. A commenter also asked how persons who are eligible to purchase at probate are notified of an estate. OHA notifies devisees, eligible heirs, and the tribe by mailing and co-owners by posting. Additionally, ILCA, as amended by AIPRA, provides all co-owners and the tribe with the right to request ownership information to track interests they would like to purchase.

One commenter asked whether the consent of the co-owners of an interest is required before purchasing an interest at probate. Consent of the co-owners is not required for a purchase at probate.

One commenter noted that purchases at probate have the potential to slow down the probate of an estate considerably, especially where a request to purchase is brought before OHA shortly before issuance of the final order. This commenter asked if the process could be handled by the regional BIA Realty office, instead of OHA. The purchase at probate process, as established by AIPRA, may occur only during adjudications of an estate by OHA. See 25 U.S.C. 2206(o).

One commenter expressed some confusion over the process for transferring title in a purchase at probate in section 30.173. This commenter thought that OHA was to issue an order to LTRO to transfer title, and was concerned that the title may not transfer in a reasonable time. In fact, the probate order transfers the title, while recordation in the LTRO provides notice of the new ownership.

One commenter expressed concern that a non-Indian may purchase at probate. The regulations establish who qualifies as an ''eligible purchaser'' at section 30.161, in accordance with AIPRA.

One commenter asked what happens to an interest if nobody purchases the interest at probate. Interests not purchased at probate will pass to the heirs according to AIPRA or the applicable probate code, or to the devisees according to the will.

One commenter noted that sections 30.260 to 30.274 refer to tribes authorized under particular statutes governing purchases and asked whether there will be a separate section for other tribes seeking to purchase interests at probate. Other tribes may purchase at probate pursuant to subpart G of 43 CFR part 30.

f. Purchase at Probate—Valuation

Several commenters objected to the proposed provision stating that an appraisal of the market value of the interest to be sold at probate must be based on an appraisal that gives appropriate consideration to the fractionated ownership interest in the parcel. One commenter objected to the language because it sets up a framework that prevents beneficiaries from receiving the highest possible value for their land, which is inconsistent with the Department's trust responsibilities. This commenter would support language stating that the appraisal is ''without consideration of the fractionation of ownership of the parcel.'' The Department revised the language, in final section 30.167(b), to clarify that the market value of the interest to be sold at probate must be based on an appraisal that meets the standards in the Uniform Standards for Professional Appraisal Practice (USPAP), or on an alternate valuation method developed by the Secretary.

Another commenter stated that taking fractionation into account in the appraisal may mean that some interests will have no value. According to this commenter, this valuation method may also mean that an appraisal of a 160-acre allotment that is heavily fractionated will result in a discounted value for the whole parcel, even for large interest holders within that parcel. This commenter stated that the valuation method may depreciate the appraised value of Indian trust lands as a whole, whether fractionated or not, and whether owned by an individual or the tribe. This commenter also stated that discounted values for fractionated parcels may affect the value of both trust and fee parcels that are not fractionated, since appraisals are based upon the sale and prices of comparable parcels, potentially reducing the net value trust lands as a whole, and adversely impacting the utility of using the parcel as collateral or security for loans.

The Department revised sections 30.167 and 30.168 to reflect the Secretary's decision to use valuation methods conforming to USPAP standards or an alternative valuation method in accordance with 25 U.S.C. 2214.

The Secretary's authority to develop and use an alternate method of valuation of Indian trust property is set forth in AIPRA:

> For purposes of this chapter, the Secretary may develop a system for establishing the fair market value of various types of lands and improvements. Such a system may include determinations of fair market value based on appropriate geographic units as determined by the Secretary. Such system may govern the amounts offered for the purchase of interests in trust or restricted lands under this Act.

25 U.S.C. 2214. To date, the Secretary has not exercised this authority. However, we have included references to the Secretary's section 2214 authority in the regulations at 43 CFR 30.167(b) and 30.265(a)(3) to allow for the use of an alternate valuation method if and when one is developed in the future. Development of such an alternate system of valuation of Indian trust lands will be done through a notice and comment process, with tribal consultation.

g. Consolidation Agreements

One commenter asked what documentation OHA will require as proof of ownership of an interest to be included as part of a consolidation agreement. OHA will require a title status report from the Land Title and Records Office as proof of ownership.

At least one comment questioned whether interests not included in the estate may be included in a consolidation agreement at probate. Interests already owned by heirs or devisees may be included in a consolidation agreement pursuant to section 30.151; however, persons who are not party to the probate may not enter into the consolidation agreement.

h. Formal and Summary Proceedings

Several commenters asked whether 43 CFR part 30 eliminates informal proceedings. The revised regulations delete the informal process, which had been handled by an Attorney Decision Maker. The revised regulations provide a formal process for all cases involving land and a summary process for cases involving only money (no land) totaling less than $5,000. In a related comment, one commenter asked whether law clerks will be adjudicating estates. Attorney Decision Makers, who are not law clerks, but rather, attorneys, may handle summary proceedings; formal proceedings will be handled by Administrative Law Judges and Indian Probate Judges, not law clerks.

One commenter requested clarification that section 30.200, regarding summary proceedings, applies only to estates not exceeding $5,000 cash held in individual Indian money (IIM) accounts. This commenter also requested clarification that summary proceedings will not be held for any estate containing an interest in land, no matter how small. The commenter is correct on both counts.

i. Resources

Several commenters mentioned resource issues with the LTRO, educating Indians about their estate planning options and consolidation options as heirs and devisees, and obtaining appraisals. The Department has considered and noted these resource issues.

j. Miscellaneous

One commenter suggested moving all the substantive provisions regarding purchase at probate and settlement and consolidation agreements from 43 CFR part 30 to 25 CFR part 15. The Department has decided to retain these provisions in 43 CFR part 30 because OHA, rather than BIA, will be handling purchases at probate and settlement and consolidation agreements. Title 43 addresses OHA procedures, while Title 15 addresses BIA procedures.

A few commenters asked how tribal probate codes fit into OHA's adjudication of an estate. Under AIPRA, tribes may develop their own probate codes and submit them to the Secretary for approval. OHA will apply any approved tribal probate code in the probate of trust estates governed by that code.

One commenter questioned what types of documents are needed if American citizenship is in question. OHA will determine whether evidence is sufficient to establish citizenship on a case-by-case basis.

One commenter stated that 30.123(a)(1) improperly authorizes administrative law judges to determine the tribal membership status of heirs and devisees. OHA's determination of who qualifies as an Indian and eligible heir is solely to determine who can inherit in trust. The Department applies the tribe's criteria to determine eligibility. OHA's determination does not affect the tribe's decision as to enrollment.

One commenter noted that a tribe may have property ownership as a condition for membership, and that people may not be able to become members of the tribe until they inherit from the probated estate. Rights to inherit an interest vest on the date of decedent's death and ownership relates back to the date of decedent's death.

One commenter asked whether a tribe can state that someone is not eligible to inherit. A tribe may establish who is eligible to inherit pursuant to an approved tribal probate code. Please refer to the model tribal probate code published by the Department on September 26, 2007 at 72 FR 54678.

One commenter asked how OHA will obtain the mailing addresses of co-owners to provide notice. Currently, OHA obtains mailing addresses from BIA. BIA uses the Department's Trust Asset Accounting Management System (TAAMS) to maintain names and addresses of co-owners in trust and restricted property.

A few commenters noted that section 30.242 allows a person claiming an interest in the estate to file a petition for reopening, but that BIA files many, if not most, petitions for reopening. The Department has revised section 30.242 to explicitly state that the agency (BIA or a compacting or contracting tribe) may also file a petition for reopening.

One commenter expressed concern with regard to section 30.121, allowing the appointment of masters. This commenter's concern is that the masters will be untrained. Masters will be appointed only based on specific expertise in the subject matter at issue in a particular case.

One commenter stated that persons should not be allowed to renounce an inherited interest or devise unless they first obtain an appraisal of the interest to be renounced. AIPRA does not require an appraisal for renunciation. A person considering renunciation may either request an appraisal or waive the right to an appraisal.

One commenter asked what the ''applicable law'' is, as stated in the definition for ''minor.'' The applicable law could be tribal law, State law, or Federal law, depending on which law applies to the particular issue at hand.

One commenter asked what the timeframe is for presuming someone to be deceased. For the purposes of probating trust and restricted property, the timeframe for presuming someone to be deceased is 6 years from the last contact with any person. A proceeding to determine whether a missing person is deceased may be initiated in accordance with 43 CFR 30.124.

One commenter asked the status of persons who qualify as Indian but who are incarcerated. Trust beneficiaries in prison are still entitled to notice. They are entitled to make wills. They may not be able to attend the hearing in a probate case, but they are entitled to have notice of the hearing. In an appropriate case, they may be able to submit written testimony or testify by deposition or telephone.

One commenter asked for clarification of the term ''lockbox.'' The Department added a definition for this term at section 30.101 and in 25 CFR 15.2.

One commenter asked whether the tribe will receive an inventory of interests to be probated in any given estate. The tribe may request a copy of the inventory from the agency before the probate file is transferred to OHA or from OHA once it has received the file from the agency.

One commenter asked that tribes be permitted to establish a specific address for receipt of notices of probate proceedings. OHA will provide notice to one address of record per tribe; however, tribes can establish their own internal mail routing procedures.

One commenter presented a factual situation in which property was omitted from an estate, and asked how OHA handles that situation. Property omitted from an estate is added and distributed pursuant to section 30.126.

2. Changes From Proposed Rule

43 CFR Part 4

In section 4.200(a), the final regulations delete the first entry in the table, ''All proceedings in subpart D.'' The final regulations also amend this table by adding ''4.201'' as a reference for ''Appeals to the Board of Indian Appeals from decisions of the Probate Hearings Division in Indian probate matters'' and ''Appeals to the Board of Indian Appeals from actions or decisions of BIA'' in the second and third rows of the table. The final regulations add a new fourth row to the table stating that sections 4.201 and 4.330 through 4.340 should be consulted for provisions relating to ''Review by the Board of Indian Appeals of other matters referred to it by the Secretary, Assistant Secretary—Indian Affairs, or Director—Office of Hearings and Appeals.''

In section 4.201, the final regulations amend the definition of ''Board'' by deleting superfluous language. The final rule adds a definition for ''Decision or Order,'' amends the definition of ''heir'' to simplify language, and amends the definition of ''interested party'' to more generally refer to a ''decedent's'' estate, rather than an ''Indian's'' estate. The definition of ''Indian probate judge'' is amended to delete ''licensed'' before attorney, since an attorney must be licensed and the deleted word is unnecessary. The definition of ''judge'' is amended by clarifying that ''judge'' means an Administrative Law Judge or Indian Probate Judge (IPJ) except when used in the term ''administrative judge.''

In section 4.320, the heading and text are changed to more generally apply to a judge's decision or order issued under 43 CFR part 30. The final rule adds that an appeal may be taken from any modification of the inventory of an estate. This does not change the scope of coverage set out in section 4.320.

In section 4.321, the final rule clarifies that the 30-day time period is measured from the date of mailing of the judge's order or decision.

In section 4.324, the final rule clarifies LTRO procedures by adding that the LTRO must certify that the probate record is complete before forwarding the certified record to the Board, must include the original of the transcript in the record and make a copy of the transcript for the duplicate record, and must prepare a table of contents for the record. The final rule also clarifies that, for interlocutory appeals or appeals related to modification of an inventory or determining that a person for whom a probate proceeding is sought to be opened is not dead, the judge must prepare the administrative record and table of contents.

Section 4.325 carries through the clarifications made in section 4.324 by

distinguishing between the probate record and the administrative record and adding a reference to the table of contents.

4 CFR Part 30

4 CFR Part 30—Subpart A

In section 30.100, the final rule updates section references. The final rule also adds a new paragraph (c) to 30.100 identifying those provisions that do not apply to Alaska.

In section 30.101, the final rule revises the definitions of ''Board'' to be consistent with section 4.201. The final rule adds new definitions for ''affidavit,'' ''deposition,'' ''discovery,'' and ''interrogatories.'' While the meaning of these terms is generally understood, the Department added definitions for clarity. Additionally, the Department added definitions for ''lockbox'' and ''master,'' in response to comments. The final regulations also clarify several definitions, including ''agency'' to include the BIA agency office having jurisdiction over trust financial assets; ''attorney decision maker'' and ''Indian probate judge'' to change ''licensed attorney'' to simply ''attorney,'' since all attorneys must be licensed; ''child'' to explicitly include natural children; and ''summary probate proceeding'' to replace ''trust personalty'' with ''IIM account.'' The definition of ''trust personalty'' is amended to include ''tangible personal property'' in response to comments regarding trust personal property beyond funds and securities (e.g., ''trust reindeer''). Minor wording changes are made to the definitions of ''decision or order,'' ''heir,'' ''IIM account,'' ''Indian,'' ''intestate,'' ''lockbox,'' ''per stirpes,'' ''we or us,'' ''will,'' and ''you.''

43 CFR Part 30—Subpart B

In section 30.114, the final rule clarifies that notice of a formal probate proceeding will be sent to only those creditors whose claims appear in the probate file.

The final regulations amend section 30.115 to replace ''probate file'' with ''probate record.'' The probate file may include judge's notes and attorney work product, while the probate record is available for inspection by the public.

43 CFR Part 30—Subpart C

The final rule adds a new paragraph (b) to section 30.120, specifying that the judge has authority to ''determine whether an individual will be deemed to be dead by reason of unexplained absence.'' This authority has been placed in the ''authority'' section in the final rule for clarity.

The final rule amends section 30.122 to measure the 30-day period from the date of mailing in accordance with the Department's determination that the date of mailing is the necessary starting point for practical purposes and for consistency with other sections' time measurements. The final regulations also clarify that the judge may make new findings of fact based on evidence in the record, and may make findings of fact and conclusions of law when hearing the case de novo.

In section 30.123, the phrase ''if relevant'' has been added to clarify that the judge will not determine nationality or citizenship unless it is an issue. These determinations are needed only when a foreign national stands to inherit, usually a Canadian or Mexican.

The final rule deletes proposed paragraph (a)(5) of section 30.125, which gave judges authority to ''address any other error deemed by the judge sufficient to order the case to be reopened.'' The Department determined this provision was overly broad.

Section 30.126 (''What happens if property was omitted from the inventory of the estate?'') has been amended to clarify that BIA may not administratively modify an estate, but only a judge may modify an estate through a modification order and that the modification order may be appealed. The final rule also adds paragraph (c) clarifying what the judge's decision or modification order must include and when a judge's modification order becomes final. The appeal procedures parallel those for challenging a decision that property was improperly included in the inventory of an estate in section 30.127.

The final rule, in section 30.127, adds language in paragraph (a) that the petitioner must notify parties whose interests may be affected by the modification. The final rule also breaks proposed paragraphs (c) and (d) of section 30.127 into several paragraphs and adds clarifying language in final paragraph (d) regarding the deadline for filing an appeal, and in final paragraph (e) that the judge (not BIA) forwards the record of all proceedings to the LTRO.

In section 30.128, the Department clarifies that an erroneous recitation of acreage alone shall not be considered an improper description.

43 CFR Part 30—Subpart D

The Department deleted several sections in this subpart to simplify the language regarding recusal of judges or ADMs, since this subject is already covered in 43 CFR 4.27(c).

43 CFR Part 30—Subpart E

In sections 30.140 and 30.141, the final regulations provide for a single process and specification of requirement for filing claims by reference to 25 CFR 15.302 through 15.305. Section 30.140 sets firm deadlines for filing claims against an Indian trust estate, regardless of whether a creditor has actual or constructive notice of either the decedent's death or the probate proceedings. The existing regulations at 43 CFR 4.250(a) set an initial deadline for filing claims of 60 days from the date BIA received verification of the decedent's death, but they provide an additional 20-day window for creditors who were not chargeable with notice in time to meet the initial deadline. Under the rule being promulgated today, for formal probate proceedings, all claims must be filed before the conclusion of the first hearing. For summary probate proceedings, different deadlines apply depending on the nature of the claimant, but the deadlines are firm, without regard to whether a claimant has notice of the probate proceedings.

As an exercise of the Secretary's broad rulemaking authority with respect to Indian probates under 25 U.S.C. 372 and 373, the Department for many years has made funds in Indian trust estates subject to the payment of creditor claims. Were it not for the Secretary's regulations, creditors would have no right to assert claims against Indian trust assets, including individual Indian trust funds. In this final rule, the Department has decided to (1) limit the funds available for the payment of claims to those that are on deposit or have accrued on the date of a decedent's death, and (2) create fixed deadlines for filing claims against the Indian trust estate.

The Department recognizes that, for creditors who do not have notice of the probate proceedings, this rule effectively cuts off their ability to file a claim against the decedent's trust funds. However, no such legal right independently exists. In order to ensure that all issues, including claims, can be addressed at the first (and typically only) hearing, and that a decedent's trust funds can be distributed promptly following the conclusion of the proceedings, the Department has decided to create fixed deadlines for filing claims and to make them applicable to all creditors.

Section 30.143 deletes ''not properly within the jurisdiction of OHA'' from paragraph (c) and ''or any of its political subdivisions'' from paragraph (d) as superfluous. Section 30.143 also includes several clarifying changes to

more explicitly define when claims will not be allowed.

A phrase has been added to section 30.145, to clarify that a claim may be reduced only if the judge determines it is unreasonable.

In section 30.146, the final regulations make changes necessary to clarify that only intangible trust personalty may be used to satisfy claims. The Department also deleted proposed paragraph (b) because it was merely the converse of (a), and therefore redundant.

In section 30.147, the final regulations delete the phrase stating that claims may be disallowed in their entirety because, if necessary, claims will be paid on a pro rata basis. The judge still has the authority, as set out in section 30.145 to disallow a claim in its entirety.

43 CFR Part 30—Subpart F

The Department did not make any significant changes to subpart F in the final rule.

43 CFR Part 30—Subpart G

Section 30.160 has been amended to reflect that purchase at probate is available for estates of decedents who die on June 20, 2006, as well as those who die after this date.

The final regulations amend section 30.167 to clarify that an interest will be sold by purchase at probate to the highest eligible bidder only if a request has been made, and an eligible bidder submits a bid in an amount equal to or greater than fair market value. The provision regarding the basis for market value has been moved from section 30.168 to section 30.167(b). The final regulations also delete the phrase ''which gives appropriate consideration to the fractionated ownership interests in the parcel'' in this provision.

The final regulations amend the heading in section 30.168 for clarification. Section 30.170(b) incorporates the requirement for the record's table of contents. The final regulations add a new 30.175 to clarify when an interest vests in a purchaser.

43 CFR Part 30—Subpart H

The citation to AIPRA has been removed from section 30.181 as unnecessary and to avoid the potential for confusion. The final regulations also delete superfluous language.

The final regulations correct section 30.182 by replacing ''testator'' with ''decedent'' in paragraph (a), and reorganize paragraphs (a) and (b) for clarity.

The final regulations also reorganize section 30.183 for clarity, and add that an interest that represents less than five percent of the entire undivided ownership in the parcel may be renounced in favor of the Indian tribe with jurisdiction over the interest, in addition to those listed in the proposed rule.

The final regulations amend the heading of section 30.184 to remove unnecessary language in paragraph (a) and add a new paragraph (b), which amends the category of persons for whom the Secretary will continue to manage trust personalty. The category of ''a person who owns a preexisting undivided trust or restricted interest in the same parcel of land'' has been deleted. While this category of persons may still receive a renounced interest in trust personalty, the Secretary may not manage those personalty interests in trust status unless the person also fits into one of the other categories (lineal descendant of the decedent, a tribe, or an Indian).

In section 30.185, the final regulations clarify the deadline for filing a refusal to accept a renounced interest.

The final regulations clarify in section 30.187 that a judge must receive a revocation of a renunciation before entry of a final order for the revocation to be effective.

The final regulations amend section 30.188 to clarify that, where there is a will, and the renunciation is not to an eligible person or entity, the interest will go to the residual devisees.

43 CFR Part 30—Subpart I

Section 30.201 has been amended to clarify that a summary of the proposed distribution, rather than all the information included on the OHA–7 form, will be included in the notice of the summary probate proceeding. The final regulations also delete the exception (''except to a creditor who is not an eligible heir'') as superfluous because such creditors do not receive notice of the summary probate proceeding.

The final rule adds a new section 30.202 to clarify that OHA will consider all claims filed with the agency before the agency transferred the file to OHA, and will consider claims of devisees or eligible heirs if filed with OHA within 30 days of the mailing of the summary probate proceeding notice. This section also moves text from the proposed section 30.202 (final section 30.203) allowing devisees or eligible heirs to renounce or disclaim an interest within 30 days of the mailing of the summary probate proceeding notice.

The final regulations clarify in section 30.207 that if nobody files for de novo review within 30 days of a written decision, it will be final for the Department. Interested parties have an opportunity to request de novo review during the 30 days following a decision, and if they forgo this opportunity, they are not given another opportunity to challenge the decision. If an interested party does request de novo review, he or she retains all rights to request rehearing and appeal.

43 CFR Part 30—Subpart J

The final regulations amend section 30.210(b) to include more accurate language with regard to notice returned by the post office as undeliverable, rather than unclaimed.

The final regulations in section 30.211 delete the deadline for the judge to publish advance notice of the hearing, since it is already included in section 30.210(a)(2).

The final regulations add clarifying language in section 30.212 and delete the statement that requirements for notice by posting may not be waived.

The final regulations amend section 30.214 to delete the requirement for the drafter of the will to be named in the notice of the hearing.

The final regulations add a new paragraph 30.222(a) clarifying what happens if a party fails to respond to a request for admission. The final regulations also delete ''and requests for admission'' from section 30.222(b).

Section 30.224(a)(3) is amended to clarify that the judge will also mail copies of the order to witnesses, in addition to interested parties. The final regulations delete paragraph (e) concerning the judge's filing a petition with the U.S. District Court to invoke the court's powers of contempt if necessary, since jurisdiction over such a proceeding cannot be conferred by regulation.

The final regulations delete proposed section 30.225 in its entirety because public disclosure is governed by the Privacy Act and AIPRA. Subsequent sections are renumbered accordingly.

The final regulations change ''probate'' to the correct term, ''probative,'' in section 30.227(a)(1), in response to a comment.

In section 30.232, the final rule deletes the sentence regarding the judge compiling the official record because this item is addressed in section 30.127.

While the final regulations do not change section 30.234, the Department would like to clarify here that, generally, the Department retains recordings indefinitely, but there is no guarantee against deterioration of recording media, so recordings may be lost due to age. To the extent that the Department may otherwise be legally required to keep records, the

Department complies with those requirements regardless of the regulation. Additionally, the Department keeps recordings as long as possible for historical purposes. Given that most recordings are now digital, the issue of storage space for tapes is less of an issue and now the issue is electronic storage space.

The final regulations revise section 30.235 to state what all decisions must include and clarify the different contents of decisions and orders in testate versus intestate cases. Under 30.235(a)(1), a decision need not contain the identification numbers of heirs and devisees, in the interest of protecting personally identifiable information of living people to the greatest extent possible. The final section also makes explicit that a judge's decision in a formal intestate probate proceeding will cite the law of descent and distribution in accordance with which the decision is made and, in all formal probate proceedings, will include the probate case number assigned to the case in any case management or tracking system then in use within the Department.

In section 30.236, the final regulations make explicit that the notice of the judge's decision must include notice that adversely affected interested parties have the right to file a petition for rehearing with the judge within 30 days of the date the decision is mailed. Likewise, the final regulations include appeal rights in section 30.239.

Section 30.242 has been reworded to clarify the applicable timelines, make explicit that the agency may also file a petition for reopening, and clarify the required contents of a petition.

In sections 30.243 and 30.244, the final regulations clarify that an order denying reopening and final order on reopening must advise interested parties of their appeal rights.

43 CFR Part 30—Subpart K

In section 30.250, the final regulations delete ''Indian'' from ''Indian testator'' because a person who owns trust or restricted property may make a will devising the property, whether or not the testator meets the definition of an ''Indian.''

The final regulations in section 30.254 delete the provision regarding sending notice of rights to appeal because the final rule includes this provision in each instance in which it is applicable, rather than in this one location.

43 CFR Part 30—Subpart L

The final regulations reorder the sections in subpart L to follow a more chronological approach. The final regulations also delete references to statutes relating to Devils Lake Sioux Reservation for the Spirit Lake Sioux Tribe and to the Standing Rock Sioux Reservation in section 30.260 because these regulations are not appropriate to those statutory schemes.

The final regulations amend section 30.262 (proposed section 30.264) to clarify that, following a decision on a rehearing or hearing, the tribe may purchase the interest in accordance with its statutory option to purchase if the decision on the rehearing or hearing is favorable to the tribe.

In final section 30.264 (proposed section 30.262), the Department clarified that BIA furnishes valuations only for those probates where a tribe exercises its statutory option to purchase. The wording of the proposed, and current, versions of the regulations caused confusion about which probates require a valuation. The final regulations reorganize this section for clarity, and specify that interested parties may view and copy, at their expense, the valuation report at the agency.

The final regulations incorporate updated language regarding rights of appeal in sections 30.267, 30.268 and 30.270.

3. Distribution Table—43 CFR Part 4, Subpart D, and 43 CFR Part 30

The following distribution table indicates where each of the current regulatory sections in 43 CFR part 4, subpart D, is located in the final 43 CFR part 30 and in final revisions to 43 CFR part 4.

Current citation	New citation	Title
4.200	30.100	How do I use this part?
4.201	30.101	What definitions do I need to know?
	30.102	Will the Secretary probate all the land or assets in an estate?
4.210	30.110	When does OHA commence a probate case?
4.211	30.111	How does OHA commence a probate case?
	30.112	What must a complete probate file contain?
	30.113	What will OHA do if it receives an incomplete probate file?
	30.114	Will I receive notice of the probate proceeding?
	30.115	May I review the probate record?
4.202	30.120	What authority does the judge have in probate cases?
	30.121	May a judge appoint a master in a probate case?
	30.122	Is the judge required to accept the master's recommended decision?
4.206	30.123	Will the judge determine matters of status and nationality?
4.204	30.124	When may a judge make a finding of death?
4.203		
4.205	30.154	What happens when a person dies without a will and has no heirs?
4.242	30.125	May a judge reopen a probate case to correct errors and omissions?
	30.130	How does a judge or ADM recuse himself or herself from a probate case?
	30.131	How will the case proceed after the judge's or ADM's recusal?
	30.132	May I appeal the judge's or ADM's recusal decision?
4.250(a)	30.140	Where and when may I file a claim against the probate estate?
4.250(c)	30.141	How must I file a claim against a probate estate?
4.250(b)	30.142	Will a judge authorize payment of a claim from the trust estate if the decedent's non-trust estate was or is available?
4.250(d)–(f)	30.143	Are there any categories of claims that will not be allowed?
4.251(a)	30.144	May the judge authorize payment of the costs of administering the estate?
4.251(b)		What are priority claims the deciding official may authorize payment for?
4.251(c)		When may the deciding official authorize payment of general claims?
4.251(d)	30.145	When can a judge reduce or disallow a claim?
4.251(e)–(g)	30.147	What happens if there is not enough trust personalty to pay all the claims?

Current citation	New citation	Title
4.251(h)	30.148	Will interest or penalties charged after the date of death be paid?
4.252	30.146	What property is subject to claims?
4.207	30.150	What action will the judge take if the interested parties agree to settle matters among themselves?
	30.151	May the devisees or eligible heirs in a probate proceeding consolidate their interests?
	30.152	May the parties to an agreement waive valuation of trust property?
	30.153	Is an order approving an agreement considered a partition or sale transaction?
	30.160	What may be purchased at probate?
	30.161	Who may purchase at probate?
	30.162	Does property purchased at probate remain in trust or restricted status?
	30.163	Is consent required for a purchase at probate?
	30.164	What must I do to purchase at probate?
	30.165	Whom will OHA notify of a request to purchase at probate?
	30.166	What will the notice of the request to purchase at probate include?
	30.167	How does OHA decide whether to approve a purchase at probate?
	30.168	How will the judge allocate the proceeds from a sale?
	30.169	Who may I do if I do not agree with the appraised market value?
	30.170	What may I do if I disagree with the judge's determination to approve a purchase at probate?
	30.171	What happens when the judge grants a request to purchase at probate?
	30.172	When must the successful bidder pay for the interest purchased?
	30.173	What happens after the successful bidder submits payment?
	30.174	What happens if the successful bidder does not pay within 30 days?
	30.175	When does a purchased interest vest in the purchaser?
4.208	30.180	May I give up an inherited interest in trust or restricted property or trust personalty?
	30.181	How do I renounce an inherited interest?
	30.182	Who may receive a renounced interest in trust or restricted land?
	30.183	Who may receive a renounced interest of less than 5 percent in trust or restricted land?
	30.184	Who may receive a renounced interest in trust personalty?
	30.185	May my designated recipient refuse to accept the interest?
	30.186	Are renunciations that predate the American Indian Probate Reform Act of 2004 valid?
4.208(c)	30.187	May I revoke my renunciation?
4.208(b)	30.188	Does a renounced interest vest in the person who renounced it?
4.212	30.200	What is a summary probate proceeding?
	30.202	May I file a claim or renounce or disclaim an interest in the estate in a summary probate proceeding?
	30.203	May I request that a formal probate proceeding be conducted instead of a summary probate proceeding?
	30.201	What does a notice of a summary probate proceeding contain?
4.213		
4.214	30.204	What must a summary probate decision contain?
4.215(a)–(c)	30.205	How do I seek review of a summary probate proceeding?
4.215(d)		
4.215(e)	30.206	What happens after I file a request for a de novo review?
	30.207	What happens if nobody files for a de novo review?
4.216	30.210	How will I receive notice of the formal probate proceeding?
	30.213	What notice to a tribe is required in a formal probate proceeding?
	30.211	Will the notice be published in a newspaper?
	30.212	May I waive notice of the hearing or the form of notice?
4.217	30.214	What must a notice of hearing contain?
4.220(a), (c)	30.215	How may I obtain documents related to the probate proceeding?
4.221(a)–(c)	30.216	How do I obtain permission to take depositions?
4.221(d)–(g)	30.217	How is a deposition taken?
4.221(h)	30.218	How may the transcript of a deposition be used?
	30.219	Who pays for the costs of taking a deposition?
4.222	30.220	How do I obtain written interrogatories and admission of facts and documents?
4.223	30.221	May the judge limit the time, place, and scope of discovery?
4.224	30.222	What happens if a party fails to comply with discovery?
4.225	30.223	What is a prehearing conference?
4.230	30.224	May a judge compel a witness to appear and testify at a hearing or deposition?
4.231	30.225	Must testimony in a probate proceeding be under oath or affirmation?
	30.226	Is a record made of formal probate hearings?
4.232	30.227	What evidence is admissible at a probate hearing?
4.233(a)–(b)	30.228	Is testimony required for self-proved wills, codicils, or revocation?
4.233(c)	30.229	When will testimony be required for approval of a will, codicil or revocation?
4.234	30.230	Who pays witnesses' costs?
4.235	30.231	May a judge schedule a supplemental hearing?
4.236(a)	30.232	What will the official record of the probate case contain?
4.236(b)	30.233	What will the judge do with the original record?
	30.234	What happens if a hearing transcript has not been prepared?
4.240(a)	30.235	What will the judge's decision in a formal probate hearing contain?
4.240(b)	30.236	What notice of the decision will the judge provide?
4.241(a)	30.237	May I file a petition for rehearing if I disagree with the judge's decision in the formal probate hearing?
4.241(b)	30.238	Does any distribution of the estate occur while a petition for rehearing is pending?
4.241(c)–(e)	30.239	How will the judge decide a petition for rehearing?
4.241(f)	30.240	May I submit another petition for rehearing?

Current citation	New citation	Title
4.241(g)–(h)		
	30.241	When does the judge's decision on a petition for rehearing become final?
4.242	30.242	May a closed probate case be reopened?
	30.243	How will the judge decide my petition for reopening?
	30.244	What happens if the judge reopens the case?
4.242(h)–(i)		
	30.245	When will the decision on reopening become final?
4.261	30.250	When does the anti-lapse provision apply?
4.262	30.251	What happens if an heir or devisee participates in the killing of the decedent?
4.270		
4.271	30.126	What happens if property was omitted from the inventory of the estate?
4.272	30.127	What happens if property was improperly included in the inventory?
	30.128	What happens if an error in BIA's estate inventory is alleged?
4.273		
4.281	30.252	May a judge allow fees for attorneys representing interested parties?
4.282	30.253	How must minors or other legal incompetents be represented?
	30.254	What happens when a person dies without a valid will and has no heirs?
4.300(a)	30.260	What land is subject to a tribal purchase option at probate?
4.300(b)–(d)	30.265	What determinations will a judge make with regard to a tribal purchase option?
4.301	30.264	When must BIA furnish a valuation of a decedent's interests?
4.302(a)	30.266	When is a final decision issued?
4.302(b)	30.262	When may a tribe exercise its statutory option to purchase?
	30.261	How does a tribe exercise its statutory option to purchase?
4.303	30.263	May a surviving spouse reserve a life estate when a tribe exercises its statutory option to purchase?
4.304	30.267	What if I disagree with the probate decision regarding tribal purchase option?
4.305(a)	30.268	May I demand a hearing regarding the tribal option to purchase decision?
4.305(b)	30.269	What notice of the hearing will the judge provide?
4.305(c)–(d)	30.270	How will the hearing be conducted?
4.306	30.271	How must the tribe pay for the interests it purchases?
4.307(a)	30.272	What are BIA's duties on payment by the tribe?
4.307(b)	30.273	What action will the judge take to record title?
4.308	30.274	What happens to income from land interests during pendency of the probate?
4.320(a)	4.320	Who may appeal a judge's decision or order?
4.320(b)(1)–(3)	4.321	How do I appeal a judge's decision or order?
	4.322	What must an appeal contain?
4.320(c)	4.323	Who receives service of the notice of appeal?
4.320(d)	4.324	How is the record on appeal prepared?
4.321	4.325	How will the appeal be docketed?
4.322	4.326	What happens to the record after disposition?

VI. Procedural Requirements

A. Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 (58 FR 51735, October 4, 1993) requires Federal agencies taking a regulatory action to determine whether that action is ''significant.'' Agencies must submit regulatory actions that qualify as significant to the U.S. Office of Management and Budget (OMB) for review, assess the costs and benefits of the regulatory action, and fulfill other requirements of the Executive Order. A significant regulatory action is one that is likely to result in a rule that may meet one of the following four criteria:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has determined that this rule is not a significant rule under Executive Order 12866 because it is not likely to result in a rule that will meet any of the four criteria.

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

This rule will not have an annual effect on the economy of $100 million or more. This rule does not add or subtract land or IIM account funds from any probate estate. Additionally, the total assets probated each year are themselves below the $100 million mark. The following discussion individually addresses each CFR part and substantive changes within each part, where appropriate. Within the discussion of each CFR part is a brief statement of the major changes, the baseline (i.e., the current state of affairs), an analysis of the economic effect of the change in comparison to the baseline alternative, and a brief conclusion.

25 CFR Part 15

This part governs the processing of probate estates by BIA and tribes contracting or compacting to perform BIA's probate functions (''agency''). Amendments will ensure that the agency compiles sufficient information in the probate file so that when the agency passes the probate file on to OHA, OHA can properly administer the probate estate. The baseline for this analysis is the existing part 15, which

does not incorporate requirements for certain items of information to be included in the probate file.

The Secretary has sole statutory authority to probate Indian trust estates. 25 U.S.C. 372; *First Moon* v. *White Tail & United States*, 270 U.S. 243 (1926); *United States* v. *Bowling*, 256 U.S. 484 (1921); *Lane* v. *United States*, 241 U.S. 201 (1916); *Hallowell* v. *Commons*, 239 U.S. 506 (1916); *Bertrand* v. *Doyle*, 36 F.2d 351 (10th Cir. 1929). As such, it is imperative that the Secretary have all the information necessary to properly determine the heirs and distribute estate assets. The enacted AIPRA amendments to ILCA, 25 U.S.C. 2201 *et seq.*, affect the determination of how property should be distributed among the heirs and beneficiaries by allowing certain persons to purchase interests in property at probate and through consolidation agreements, and affect who can inherit a small fractional interest. AIPRA therefore directly affects the determinations that OHA will make and requires additional information to be included in the probate file.

The primary benefit of the amendments is that they ensure that OHA will have the information it needs in the probate file to adjudicate Indian estates. Because this part addresses only internal processes, and does not impose any enforceable obligation on persons outside the agency, there is no effect on the outside economy. Amendments to this part focus on the agency's procedures in compiling a complete probate file, and addressing what should be included in that file. No economic impact is associated with these internal processes.

25 CFR Part 179

Amendments to part 179 make two primary changes with potential to affect the economy:

- Incorporate AIPRA's requirement that life estates created by operation of law under AIPRA after June 20, 2006, will be ''without regard to waste,'' as explained below.
- Replace the current tables showing the value of a life estate and remainderman with a reference to Actuarial Table S, issued by the Internal Revenue Service, to make life estate and remainder valuations consistent with the Internal Revenue Service's valuations.

The existing part 179 provided that the life tenant will have the rights to all rents and profit, as income, from the estate, but did not provide that such rights were ''without regard to waste'' for life tenants by intestacy. Therefore, the existing part 179 required all life tenants to ensure that they did not diminish the estates of the remaindermen in their pursuit of rents and profits. Additionally, the existing part 179 required contract bonuses to be split one-half each between the life tenant and the remainderman.

The first primary change to part 179 is necessary to reflect the AIPRA sections establishing that life estates created by operation of law under AIPRA will be determined ''without regard to waste,'' meaning that the life estate holder is entitled to the receipt of all income, including bonuses and royalties, from such land, to the exclusion of remaindermen. *See* 25 U.S.C. 2201(10), 2205, 2206(a)(2). These amendments comply with the provisions of AIPRA with respect to life estates created by operation of law under AIPRA after June 20, 2006. There is no change with respect to life estates created before June 20, 2006, or life estates created by conveyance documents on or after June 20, 2006.

The cost of amendments incorporating ''without regard to waste'' provisions could be a reduced value of the remaindermen's estate. However, amendments to the discount rate will generally provide remaindermen with more value. These amendments may affect the timing of the distribution of the value of the land between life tenants and remaindermen, but will not affect the economy as a whole. The Department does not currently track how many life estates are created by operation of law under AIPRA, but if it were assumed for the sake of analysis that all probated acreage included life estates created by operation of law under AIPRA on or after June 20, 2006, the value of the life estates would be some fraction of the value of the total land value per year, which is $74,724,525. The new requirement that the life estate holder receive all income, including bonuses and royalties, from such land, affects only the allocation of this amount between life estate holders and remaindermen, and does not affect the economy.

The change to the valuation tables, eliminates valuation based on the gender of the life tenant, and now refers to Internal Revenue Service Actuarial Table S. In the current version of part 179, the valuation of remainder interests where the life tenant was female was consistently lower than the valuation of remainder interests where the life tenant was male. At a 6 percent discount rate, the IRS Actuarial Table S results in remainder valuations that generally fall between the two values. Again, this change affects only the allocation of the value between the life estate holders, and does not affect the economy.

For these reasons, part 179 will not have an effect on the economy.

43 CFR Parts 4 and 30

Most amendments to 43 CFR part 4 (including those incorporated in the new part 30) are amendments to the existing 43 CFR part 4, subpart D, relating to the administration of probate estates. The amendments add provisions to implement procedures established by AIPRA for renouncing an interest, consolidating interests by agreement, requesting and conducting a purchase at probate, and setting the time periods for filing requests for de novo review and rehearing at 30 days, rather than the current 60 days.

Because these provisions relate to procedural aspects of probating trust estates and will not affect the amount of money and property within each estate that is distributed, nor the number of estates that must be probated, they have no effect on the economy. For these reasons, amendments to 43 CFR part 4, subpart D, and the new 43 CFR part 30 will not affect the economy.

New 25 CFR Part 18 (Tribal Probate Codes)

The new CFR part addressing tribal probate codes implements provisions of ILCA that allow any tribe to adopt a tribal probate code to govern descent and distribution of trust and restricted lands within its reservation or otherwise subject to its jurisdiction. 25 U.S.C. 2005(a). ILCA provides that the tribe must submit the tribal probate code containing provisions for trust and restricted lands to the Secretary for review and approval. The Secretary may not approve a tribal probate code that contains provisions contrary to Federal law or policy.

The baseline is the absence of regulations governing tribal probate codes. While the ILCA statute had established requirements for a tribal probate code and the basics of the submission and approval process in 1983, there have been no implementing regulations. With AIPRA, a new uniform Federal probate code will govern descent and distribution of trust and restricted property. This may prompt some tribes to prepare a tribal probate code and may prompt tribes that already have a tribal probate code to amend it in light of AIPRA.

An approved tribal code, or AIPRA if there is none, will govern the descent and distribution of trust and restricted lands for deceased persons owning trust or restricted property. AIPRA will govern the descent and distribution of trust personalty. These regulations, which implement statutory provisions

for Secretarial approval of tribal probate codes, do not affect the economy because tribes were already authorized to establish tribal probate codes and statutorily required to submit such codes to the Secretary for approval. For these reasons, the new 25 CFR part 18 will not affect the economy.

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

Implementation of this rule will not create any serious inconsistencies or otherwise interfere with an action taken or planned by another agency because the Department is the only agency with authority for handling Indian trust management issues related to probate. Additionally, this rule will standardize processes within the Department, to guard against internal inconsistencies.

(3) This rule will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients thereof.

(a) The revisions 25 CFR part 15 address what must be included in a probate package and describe how to file a claim against an estate, but do not address entitlements, grants, user fees, or loan programs. Therefore, revisions to part 15 have no budgetary effects and do not affect the rights or obligations of any recipients.

(b) The revisions to 43 CFR part 4 (including those incorporated into the new 43 CFR part 30) address the procedures for adjudicating a probate case and the rights of individual Indians with respect to a probate case. The revisions do not address entitlements, grants, user fees, or loan programs.

(c) Amendments to 25 CFR part 179 change the respective rights of a life estate tenant, and remainderman, where the life estate was created by operation of law under AIPRA on or after June 20, 2006. This change entitles the life tenant to receive all income from the land, including rents and profits, contract bonuses, and royalties. This change in rights will not impact the budget.

(d) The new CFR part addressing tribal probate codes does not address entitlements, grants, user fees or loan programs and will not materially alter the Department's budget because the CFR part merely implements the existing statutory requirement for Departmental review of tribal probate codes that contain provisions applicable to trust or restricted lands, and the requirement for Secretarial approval of those provisions.

(4) This rule does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Most of the regulatory changes directly implement statutory provisions that require certain actions to meet Indian trust management responsibilities. Specifically, the rule implements requirements of AIPRA, the American Indian Trust Fund Management Reform Act of 1994, and court orders. The legal and policy issues related with this rulemaking have been thoroughly discussed through the process of developing and implementing the Fiduciary Trust Model, discussed in the preamble.

Thus, the impact of the rule is confined to the Federal Government, individual Indians, and tribes and does not impose a compliance burden on the economy generally. Accordingly, this rule is not a ''significant regulatory action'' from an economic standpoint, nor does it otherwise create any inconsistencies, materially alter any budgetary impacts, or raise novel legal or policy issues.

B. Regulatory Flexibility Act

The Department has reviewed this rule pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). Small businesses who may be creditors of an estate are the only small entities potentially impacted by this rule, and the Department has determined that this rule will not have a significant economic impact on these entities. Indian tribes are not considered to be small entities for the purposes of the Act and, consequently, no regulatory flexibility analysis has been done to address the effects on Indian tribes.

C. Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804(2), sets criteria for determining whether a rule is ''major.'' A rule is major if OMB finds that the rule will result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule is not major within the meaning of SBREFA. It may require some limited additional expenditures by tribes, as discussed in subsection H of the procedural requirements (Paperwork Reduction Act) of this preamble. However, it will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year.

Because this rule is limited to probated Indian trust estates, land, and assets within the United States and within tribal communities, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions or have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2. U.S.C. 1531 *et seq.*, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. If the agency promulgates a proposed or final rule with Federal mandates that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, the Federal agency must prepare a written statement, including a cost-benefit analysis of the rule, under section 202 of the UMRA. The term ''Federal mandate'' means any provision in statute or regulation or any Federal court ruling that imposes ''an enforceable duty'' upon State, local, or tribal governments, and includes any condition of Federal assistance or a duty arising from participation in a voluntary Federal program that imposes such a duty.

The Department has determined that the rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. The following discussion addresses each CFR part individually to identify Federal mandates.

25 CFR Part 15

Most amendments to part 15 address the internal processes of the BIA (or tribe that has compacted or contracted to fulfill probate functions) in compiling probate files.

- Part 15 contains a mandate for tribal governments to provide information

when necessary to complete a probate file. This provision is aimed at requiring tribes to provide information that is already readily available to them, such as family history data.

- Part 15 also contains a mandate for the public, presumably someone closely associated with the decedent, to provide either a certified copy of a death certificate or other information regarding the death.

Subsection H of the procedural requirements (Paperwork Reduction Act) of this preamble states the expected increase in cost burden on tribal governments of these mandates, which is minimal. The opportunity for tribes to adopt their own tribal probate codes is voluntary and does not qualify as a Federal mandate.

25 CFR Part 179

Amendments to part 179 do not impose any duties on persons outside the Department of the Interior.

43 CFR Parts 4 and 30

Amendments to 43 CFR part 4 (including those incorporated into the new 43 CFR part 30), related to adjudication of probate estates, clarify the process for renouncing an interest, and allow consolidation agreements and purchases at probate. These opportunities are voluntary. The remainder of the amendments address OHA adjudication of probate estates and appeals. These amendments do not impose any Federal mandates on individual Indians, tribes, or others outside the Department of the Interior.

New 25 CFR Part 18 (Tribal Probate Codes)

The new CFR part addressing tribal probate codes implements statutory authority for the adoption of a tribal probate code and statutory requirements for Secretarial approval of tribal probate codes. The adoption of a tribal probate code is voluntary; therefore, this rule does not impose any Federal mandates on tribes.

Section 205 of the UMRA requires the agency to identify and consider a reasonable number of regulatory alternatives to the rule and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The Department has determined that alternatives to this rule are limited by practicality and feasibility, among other concerns, given that this rule is the result of negotiated working group recommendations working within the confines of statutory and judicial mandates. For this reason, the primary alternative the Department examined was the baseline (i.e., the current CFR part or the absence of regulatory provisions, as appropriate). With respect to each CFR part, the Department determined that the final language meets the objectives of the rule.

Section 203 of the UMRA requires the agency to develop a small government agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The small government agency plan must include procedures for notifying potentially affected small governments, providing officials of affected small governments with the opportunity for meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. The Department has been operating under tribal consultation procedures that equate to a small government agency plan. The Department has developed these regulations in accordance with consultation procedures for notifying tribes, providing tribes with the opportunity for meaningful and timely input on the development of the rule; and it continues to inform, educate, and advise tribes on the contents of the rule.

E. Governmental Actions and Interference With Constitutionally Protected Property Rights (Executive Order 12630)

This rule does not have significant ''takings'' implications. The Department notes that all sales under these regulations require that the owners be compensated at fair market value.

F. Federalism (Executive Order 13132)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), establishes certain requirements for Federal agencies issuing regulations, among other agency documents, that have ''federalism implications.'' A regulation has ''federalism implications'' when it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of the States. The rule primarily provides means for improving the trust relationship between the Department and individual Indians by allowing the Department to better serve beneficiaries' interests. Additionally, the Federal government and the tribes have a government-to-government relationship that is independent of and does not affect the Federal government's relationship to the States or the balance of power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

G. Civil Justice Reform (Executive Order 12988)

Executive Order 12988 (61 FR 4729, February 7, 1996), section 3(a), requires Federal agencies to adhere to the following requirements when promulgating regulations: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) specifically requires that executive agencies make every reasonable effort to ensure that the regulations (1) clearly specify any preemptive effect; (2) clearly specify any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specify the retroactive effect, if any; (5) adequately define key terms; and (6) address other important issues clearly affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires agencies to review regulations in light of the applicable standards in sections 3(a) and 3(b) to determine whether they are met or whether it is unreasonable to meet one or more of them.

The Department has determined that this rule will not unduly burden the judicial system. Significant portions of the rule will ensure that the judicial system is not overly burdened through enhancements to the administrative adjudication process. For example, amendments to 43 CFR parts 4 and 30, which describe the administrative processes for challenging the outcome of a probate proceeding, will streamline the probate adjudication process. Additionally, the Department has determined that the rule meets the applicable standards provided in sections 3(a) and 3(b) of Executive Order 12988. The Department has incorporated ''plain language'' approaches, as described in OMB's Writing User-Friendly Topics referred to

in the **Federal Register** Document Drafting Handbook. Department attorneys provided input throughout the development and drafting of these regulations to provide clear legal standards, specify preemptive effects, specify the effect on existing Federal laws and regulations, and otherwise minimize the likelihood that litigation will result from an ambiguity in the regulations.

H. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. No person is required to respond to an information collection request that has not complied with the PRA.

1. Background

In the **Federal Register** of August 8, 2006, the Department published the proposed rule and invited comments on the proposed collection of information. The Department reopened the comment period for an additional 60 days to January 2, 2007. The Department again reopened the public comment period on January 25, 2007, for an additional 60 days to March 12, 2007. The Department submitted the information collection request to the Office of Management and Budget (OMB) for review and approval. OMB did not approve this collection of information, but instead, filed comment. In filing comment on this collection of information, OMB requested that, prior to the publication of the final rule, the Department provide all comments on the recordkeeping and reporting requirements in the proposed rule, the Department's response to these comments, and a summary of any changes to the information collections. Further, OMB requested for any future submissions of this information collection, the Department indicate the submission as ''new'' and reference OMB control numbers 1076–0169, 1076–0168, and 1076–0171.

2. Comments on Information Collections

In response to publication of the proposed rule in the **Federal Register** and notices reopening the comment period, the Department did not receive any public comments regarding the information collection requirements. However, the Department did receive a few oral comments on the information collection requirements during tribal consultations and one written comment from a Departmental employee.

The oral comments asked generally what the Paperwork Reduction Act section of the proposed rule addressed, and what the information collection request figures represented. Representatives of the Department responded at the tribal consultations by summarizing the Paperwork Reduction Act's requirement that the Department (1) identify any instances where the regulation requests that members of the public provide information; (2) explain the need for that information collection request; and (3) estimate how long it will take members of the public to provide the information. The Department representatives highlighted the fact that members of the public are welcome to comment on the information collection requests, including the Department's need for the information and estimates for how long it will take to provide the information.

Pursuant to OMB's comments, the Department has summarized and submitted the comments, the Department's responses to these comments, and any changes made to information collections to OMB.

3. Information Collection Hour Burdens

Two CFR parts being published today contain information collection requests: 25 CFR parts 15 and 18. The following tables, by part, describe the information collection requirements in each section of the final rule and any changes from the current rule.

25 CFR Part 15

Title: Probate of Indian Estates, Except for Members of the Osage Nation and the Five Civilized Tribes.

OMB Control Number: 1076–0169.

Requested Expiration Date: Three years from the approval date.

Summary: This part contains the procedures that the Secretary of the Interior follows to initiate the probate of the trust estate of a deceased person for whom the Secretary holds an interest as trust or restricted property. The Secretary must perform the information collection requests in this part to obtain the information necessary to compile an accurate and complete probate file. This file will be forwarded to the Office of Hearings and Appeals (OHA) for disposition. Responses to these information collection requests are required to obtain benefits (e.g., payment of a devise or claim from a probated estate) in accordance with the Secretary's sole statutory authority to probate estates (*see* 25 U.S.C. 372).

Bureau Form Number: None.

Frequency of Collection: One per respondent each year with the exception of tribes that may be required to provide enrollment information on an average of approximately 10 times/year.

Description of Respondents: Indians, businesses, and tribal authorities.

Number of Respondents: 64,915.

Total Annual Responses: 76,655.

Total Annual Burden Hours: 1,037,433.

The following is an explanation of the information collection requirements for 25 CFR part 15.

Section 15.9 What information must be included in an affidavit for a self-proved will, codicil, or revocation?

This rule includes a requirement for a testator and witnesses executing a self-proving will, codicil, or revocation to file affidavits. The Department has estimated that approximately 1,000 testators will choose to execute self-proving wills each year and that it will take approximately 0.5 hour to make the affidavit before an official authorized to administer oaths and to attach the affidavit to the will = 500 burden hours. This represents an increase of 500 burden hours due to program change with no annualized startup, or operations and maintenance costs.

Likewise, given that approximately 1,000 testators will choose to execute self-proving wills each year, approximately 2,000 witnesses will be required to file supporting affidavits at 0.5 hour each = 1,000 burden hours. This represents an increase of 1,000 burden hours due to program change with no annualized startup, or operations and maintenance costs.

Section 15.104 Does the agency need a death certificate to prepare a probate file?

This rule adds a requirement for persons unable to provide a certified copy of a death certificate to provide as much information as they have about the deceased, including the State, city, reservation, location, date, and cause of death, the last known address of the deceased, and names and addresses of others who may have information about the deceased. If no death certificate exists, they must provide this information in an affidavit. This information will ensure that BIA has the information it needs regarding the identity of the deceased to collect documents for the probate file. The requirement already existed to provide a certified copy of a death certificate or, when unable to provide a certified copy of a death certificate because none existed, newspaper articles, obituary, or death notices and a church or court record.

The Department estimates that preparing the affidavit in lieu of

providing a death certificate will impose an additional 1 hour burden per response to comply with this section. The existing estimated burden for locating and providing the death certificate is 4 hours per response. Assuming a respondent provides an affidavit in lieu of a certified copy of a death certificate only after spending the 4 hours searching unsuccessfully for the death certificate, 5 total burden hours per response are required to comply with this section. Assuming approximately 5,850 probates per year, the total burden will be 5,850 responses × 5 hours per response = 29,250 burden hours. This represents an increase of 5,850 hours due to a programmatic change, with no annualized startup, or operations and maintenance costs.

Section 15.105 What other documents does the agency need to prepare a probate file?

This section lists the items that BIA needs to prepare a probate file. The decedent's family and other knowledgeable members of the public are the most likely respondents for this information. The rule adds several items of information that must be included in the probate file. These additional items are (1) adoption and guardianship papers concerning decedent's potential heirs or beneficiaries; (2) orders requiring payment of spousal support; (3) identification of person or entity to whom an interest is renounced; (4) court judgments regarding creditor claims; and (5) place of enrollment and tribal enrollment or census number of the decedent and potential heirs and beneficiaries.

The Department estimates that providing these documents will add approximately 1.25 hours to each response. Assuming 21,235 respondents annually × 45.5 hours to complete this section = 966,192.5 burden hours. This is an increase of approximately 26,543.75 hours due to a program change, with no annualized startup, or operations and maintenance costs.

Section 15.301 May I receive funds from the decedent's IIM account for funeral services?

There has been no change to the information collection requirements in this section. The Department estimates that there will be one request for funeral expenses per each of the estimated 5,850 probates per year, at an estimated 2 hours per response = 11,700 burden hours, with no annualized startup, or operations and maintenance costs.

Section 15.302 May I file a claim against the estate?

This rule adds to the requirements in the existing regulations that creditors provide information regarding their claims. Specifically, the rule requires creditors to file with the Secretary an affidavit and an itemized statement of the debt, including copies of any documents (such as signed notes, mortgages, account records, billing records, and journal entries) necessary to prove the indebtedness.

For the proposed rule, the Department estimated that, on average, approximately 6 creditor claims per probate estate will be filed and that it will take creditors approximately 0.5 hour to provide this information. The Department believes that the number-of-claims estimate was, in fact, high, but because no public comments were received, the Department has retained this estimate. The most recent Paperwork Reduction Act submission purported to assume that 6 claims per probate estate would be filed, but at 5,850 probates per year, the previous assumption of 127,410 respondents appears to be erroneous. Assuming 35,100 responses (6 claims per probate estate × 5,850 probate estates), the Department estimates the burden hours = 35,100 responses × 0.5 = 17,550 burden hours. This is a decrease of approximately 46,155 hours due to an adjustment with no annualized startup, or operations and maintenance costs.

This rule also adds a requirement for the person filing a claim against the estate to file an affidavit. The Department has determined that this does not qualify as ''information'' under 5 CFR 1320.3(h)(1) because it entails no burden other than that necessary to identify the claimant, the date, the claimant's address, and the nature of the instrument as a claim against the estate.

Section 15.203 What information must tribes provide BIA to complete the probate file?

This new section requires tribes to provide any information the Secretary requires to complete the probate file, such as enrollment or family data. The information required by the Secretary will include documents that the tribe should have readily available. We assumed that, of the 5,850 probate cases, at least one decedent would come from each of the 562 federally recognized tribes. On average, a tribe will have to provide information for approximately 10 of the 5,850 probate cases per year. We estimate that each tribe will require 2 hours to assist in completing the probate file × 10 responses annually × 562 Federal recognized tribes = 11,240 hours to ensure completion of probate files. This is a new requirement, which incorporates 11,240 hours as a program change, with no annualized startup, or operations and maintenance costs.

Section 15.403 What happens after the probate order is issued?

This section provides that a request for de novo review may be filed within 30 days of a probate decision by an Attorney Decision Maker. The information collection requirements that had been included in this section have been moved to 43 CFR part 4, but are exempt under 5 CFR 1320.4(a)(2) because they relate to the conduct of administrative actions against specific individuals. Additionally, all that is required is the filing of a request for do novo review. This represents a decrease of 53,088 hours due to a program change.

Note: The ''Old CFR Section'' numbers in the table below are those as of the last Paperwork Reduction Act submission for 25 CFR part 15 in December 2003.

Old CFR section	New CFR section	Description of info collection requirement	Number of response per yr	Hours per response	Total hours requested (Annual)	Currently approved hours	Explanation of difference
	15.9	File affidavit to self-prove will, codicil, or revocation.	1,000	0.5	500	0	Requires testator affidavit to self-prove will.
	15.9	File supporting affidavit to self-prove will, codicil, or revocation.	2,000	0.5	1,000	0	Requires witness affidavits to self-prove will.
15.101	15.104	Reporting req.—death certificate.	5,850	5	29,250	23,400	New section requires additional information where a death certificate is not provided.

Old CFR section	New CFR section	Description of info collection requirement	Number of response per yr	Hours per response	Total hours requested (Annual)	Currently approved hours	Explanation of difference
15.106	15.301	Reporting funeral expenses.	5,850	2	11,700	11,700	No change.
15.104	15.105	Provide probate documents.	21,235	45.5	966,193	939,649	Amendments delete requirement for birth certificate, but add other requirements.
15.109		Provide disclaimer info (1/4).	0	0	0	7,887	Section deleted.
15.303	15.302	File claim against estate (affidavit).	N/A	N/A	N/A		
15.203	N/A	Provide response to transmittal.	0	0	0	2,972	This requirement has been deleted.
15.303	15.302	Provide info on creditor claim (6 per probate).	35,100	0.5	17,550	63,705	Decrease to reflect 6 claims per probate.
	15.203	Provide tribal information for probate file [2].	5,620	2	11,240	0	New requirement for tribes to provide enrollment information, upon request.
15.402	15.403	Provide info for filing appeal.	0	0	0	53,088	Now only have to file a notice of appeal; info collection requirements moved to 43 CFR part 4.
Total	.....	.....	76,655	.....	1,037,433	1,094,514	

25 CFR Part 18

Title: Tribal Probate Codes.

OMB Control Number: 1076–0168.

Requested Expiration Date: Three years from the approval date.

Summary: This part contains the procedures that the Secretary of the Interior follows to review and approve tribal probate codes and amendments to tribal probate codes. This part also explains the procedure the tribe must follow to begin the approval process for a tribal probate code or amendment to the code, as well as the date on which the tribal probate code becomes effective.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Tribal authorities.

Number of Respondents: 100.

Total Annual Responses: 100.

Total Annual Burden Hours: 50.

The following is an explanation of the information collection requirements for 25 CFR part 18.

Section 18.105 How does a tribe request approval for a tribal probate code?

Section 18.202 How does a tribe request approval for a tribal probate code amendment?

Section 18.302 How does a tribe request approval for the single heir rule?

This rule adds a requirement for a tribe enacting a new tribal probate code, amending an existing tribal probate code, or enacting a freestanding single heir rule, to submit the code, amendment, or rule to the Secretary for approval. Secretarial approval is required whenever the code, amendment, or rule governs the descent or distribution of trust or restricted lands. The Department has estimated that, on average, approximately 100 tribes will submit new codes, amend their existing codes, or submit freestanding single heir rules each year, and that it will take approximately 0.5 hour to submit the document to the Secretary = 50 burden hours. This represents an increase of 50 burden hours due to program change with no annualized startup, or operations and maintenance costs.

New CFR section	Description of info collection requirement	Number of responses per yr	Hours per response	Total hours requested (annual)	Currently approved hours	Explanation of difference
18.105, 18.202, 18.302	Submit tribal probate code, amendment, or single heir rule.	100	0.5	50	0	New section requires submission of tribal probate code, amendment, or single heir rule for approval.
Total	.....	100		50	0	

4. OMB Approval of Information Collections

OMB has approved the information collection requirements included in this final rule and has assigned the following OMB Control Numbers—25 CFR part 15: OMB Control No. 1076–0169, and 25 CFR part 18: OMB Control No. 1076–0168. These approvals will expire on 11/30/2011. Questions or comments concerning this information collection should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

I. National Environmental Policy Act (NEPA)

The National Environmental Policy Act of 1969 (NEPA) requires Federal

agencies to prepare an environmental assessment or environmental impact statement for all ''major Federal actions.'' This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required because any environmental effects of this rule are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Further, the Federal actions under this rule (e.g., approval or disapproval of leases of Indian lands), where they qualify as ''major Federal actions,'' will be subject to the NEPA process at the time of the action itself, either collectively or case-by-case.

J. Government-to-Government Relationships With Tribes (Executive Order 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and Indian trust assets and have identified potential effects. The Department engaged tribal government representatives in developing the Fiduciary Trust Model, which served as the basis for this rulemaking, provided tribal government representatives with advance copies of the proposed rule, and provided additional notice to tribal government through **Federal Register** notices. The Department presented the preliminary drafts and obtained the input of tribes at two formal consultation meetings: One in Albuquerque, New Mexico, on February 14–15, 2006, and one in Portland, Oregon, on March 29, 2006. The Department then presented revised drafts and again obtained the input of tribes at tribal consultations in Rapid City, South Dakota, on July 27, 2006. Tribal consultations on the proposed regulations took place in Billings, Montana, on August 8, 2006, and in Minneapolis, Minnesota, on August 10, 2006. The Department carefully reviewed comments received by tribal government officials. These actions enabled tribal officials and the affected tribal constituency throughout Indian country to have meaningful and timely input in the development of the final rule, while reinforcing positive intergovernmental relations with tribal governments.

K. Energy Effects (Executive Order 13211)

Executive Order 13211 addresses regulations that significantly affect energy supply, distribution, and use. The Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In accordance with this Executive Order, this rule does not have a significant effect on the nation's energy supply, distribution, or use. This rule is restricted to addressing assets held in trust or restricted status for individual Indians or tribes.

L. Information Quality Act

In developing this rule, the Department did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

List of Subjects

25 CFR Part 15

Estates, Indians–law.

25 CFR Part 18

Estates, Indians–lands.

25 CFR Part 179

Estates, Indians–lands.

43 CFR Part 4

Administrative practice and procedure, Claims.

43 CFR Part 30

Administrative practice and procedure, Claims, Estates, Indians, Lawyers.

■ For the reasons given in the preamble, the Department of the Interior amends chapter 1 of title 25 and subtitle A of title 43 of the Code of Federal Regulations as follows.

Title 25—Indians

Chapter 1—Bureau of Indian Affairs, Department of the Interior

■ 1. Revise part 15 to read as follows:

PART 15—PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF THE OSAGE NATION AND THE FIVE CIVILIZED TRIBES

Subpart A—Introduction

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15.505 How does the Paperwork Reduction Act affect this part?

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410, 2201 *et seq.*; 44 U.S.C. 3101 *et seq.*

Cross Reference: For special rules applying to proceedings in Indian Probate (Determination of Heirs and Approval of Wills, Except for Members of the Five Civilized Tribes and Osage Indians), including hearings and appeals within the jurisdiction of the Office of Hearings and Appeals, see title 43, Code of Federal Regulations, part 4, subpart D, and part 30; Funds of deceased Indians other than the Five Civilized Tribes, see title 25 Code of Federal Regulations, part 115.

Subpart A—Introduction

§ 15.1 What is the purpose of this part?

(a) This part contains the procedures that we follow to initiate the probate of the trust estate of a deceased person for whom the United States holds an interest in trust or restricted land or trust personalty. This part tells you how to file the necessary documents to probate the trust estate. This part also describes how probates will be processed by the Bureau of Indian Affairs (BIA), and when probates will be forwarded to the Office of Hearings and Appeals (OHA) for disposition.

(b) The following provisions do not apply to Alaska property interests:

(1) Section 15.202(c), (d), (e)(2), (n), and (o); and

(2) Section 15.401(b).

§ 15.2 What definitions do I need to know?

Act means the Indian Land Consolidation Act and its amendments, including the American Indian Probate Reform Act of 2004 (AIPRA), Pub. L. 108–374, as codified at 25 U.S.C. 2201 *et seq.*

Administrative law judge (ALJ) means an administrative law judge with the Office of Hearings and Appeals appointed under the Administrative Procedure Act, 5 U.S.C. 3105.

Affidavit means a written declaration of facts by a person that is signed by that person, swearing or affirming under penalty of perjury that the facts declared are true and correct to the best of that person's knowledge and belief.

Agency means:

(1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust personalty; and

(2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

Attorney Decision Maker (ADM) means an attorney with OHA who conducts a summary probate proceeding and renders a decision that is subject to de novo review by an administrative law judge or Indian probate judge.

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

Child means a natural or adopted child.

Codicil means a supplement or addition to a will, executed with the same formalities as a will. It may explain, modify, add to, or revoke provisions in an existing will.

Consolidation agreement means a written agreement under the provisions of 25 U.S.C. 2206(e) or 2206(j)(9), entered during the probate process, approved by the judge, and implemented by the probate order, by which a decedent's heirs and devisees consolidate interests in trust or restricted land.

Creditor means any individual or entity that has a claim for payment from a decedent's estate.

Day means a calendar day.

Decedent means a person who is deceased.

Decision or order (or *decision and order*) means:

(1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personalty;

(2) The decision issued by an attorney decision maker in a summary probate proceeding; or

(3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is dead by reason of unexplained absence.

Department means the Department of the Interior.

Devise means a gift of property by will. Also, to give property by will.

Devisee means a person or entity that receives property under a will.

Eligible heir means, for the purposes of the Act, any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are any of the following:

(1) Indian;

(2) Lineal descendents within two degrees of consanguinity of an Indian; or

(3) Owners of a trust or restricted interest in a parcel of land for purposes of inheriting—by descent, renunciation, or consolidation agreement—another trust or restricted interest in such parcel from the decedent.

Estate means the trust or restricted land and trust personalty owned by the decedent at the time of death.

Formal probate proceeding means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

Heir means any individual or entity eligible to receive property from a decedent in an intestate proceeding.

Individual Indian Money (IIM) account means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary.

Indian means, for the purposes of the Act, any of the following:

(1) Any person who is a member of a federally recognized Indian tribe is eligible to become a member of any federally recognized Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under 25 U.S.C. 479; or

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

Indian probate judge (IPJ) means an attorney with OHA, other than an ALJ, to whom the Secretary has delegated the authority to hear and decide Indian probate cases.

Interested party means:

(1) Any potential or actual heir;

(2) Any devisee under a will;

(3) Any person or entity asserting a claim against a decedent's estate;

(4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or

(5) A co-owner exercising a purchase option.

Intestate means that the decedent died without a valid will as determined in the probate proceeding.

Judge means an ALJ or IPJ.

Lockbox means a centralized system within OST for receiving and depositing trust fund remittances collected by BIA.

LTRO means the Land Titles and Records Office within BIA.

OHA means the Office of Hearings and Appeals within the Department of the Interior.

OST means the Office of the Special Trustee for American Indians within the Department of the Interior.

Probate means the legal process by which applicable tribal, Federal, or State law that affects the distribution of a decedent's estate is applied in order to:

(1) Determine the heirs;

(2) Determine the validity of wills and determine devisees;

(3) Determine whether claims against the estate will be paid from trust personalty; and

(4) Order the transfer of any trust or restricted land or trust personalty to the heirs, devisees, or other persons or entities entitled by law to receive them.

Purchase option at probate means the process by which eligible purchasers can purchase a decedent's interest during the probate proceeding.

Restricted property means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the purpose of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term ''restricted property'' as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

Secretary means the Secretary of the Interior or an authorized representative.

Summary probate proceeding means the consideration of a probate file without a hearing. A summary probate proceeding may be conducted if the estate involves only an IIM account that does not exceed $5,000 in value on the date of the decedent's death.

Superintendent means a BIA Superintendent or other BIA official, including a field representative or one holding equivalent authority.

Testate means that the decedent executed a valid will as determined in the probate proceeding.

Testator means a person who has executed a valid will as determined in the probate proceeding.

Trust personalty means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

Trust property means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

We or *us* means the Secretary, an authorized representative of the Secretary, or the authorized employee or representative of a tribe performing probate functions under a contract or compact approved by the Secretary.

Will means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

You or I means an interested party, as defined herein, with an interest in the decedent's trust estate unless the context requires otherwise.

§ 15.3 Who can make a will disposing of trust or restricted land or trust personalty?

Any person 18 years of age or over and of testamentary capacity, who has any right, title, or interest in trust or restricted land or trust personalty, may dispose of trust or restricted land or trust personalty by will.

§ 15.4 What are the requirements for a valid will?

You must meet the requirements of § 15.3, date and execute your will, in writing and have it attested by two disinterested adult witnesses.

§ 15.5 May I revoke my will?

Yes. You may revoke your will at any time. You may revoke your will by any means authorized by tribal or Federal law, including executing a subsequent will or other writing with the same formalities as are required for execution of a will.

§ 15.6 May my will be deemed revoked by operation of the law of any State?

No. A will that is subject to the regulations of this subpart will not be deemed to be revoked by operation of the law of any State.

§ 15.7 What is a self-proved will?

A self-proved will is a will with attached affidavits, signed by the testator and the witnesses before an officer authorized to administer oaths, certifying that they complied with the requirements of execution of the will.

§ 15.8 May I make my will, codicil, or revocation self-proved?

Yes. A will, codicil, or revocation may be made self-proved as provided in this section.

(a) A will, codicil, or revocation may be made self-proved by the testator and attesting witnesses at the time of its execution.

(b) The testator and the attesting witnesses must sign the required affidavits before an officer authorized to administer oaths, and the affidavits must be attached to the will, codicil, or revocation.

§ 15.9 What information must be included in an affidavit for a self-proved will, codicil, or revocation?

(a) A testator's affidavit must contain substantially the following content:

Tribe of ____ or
State of ____
County of ____.

I, ____, swear or affirm under penalty of perjury that, on the __ day of ____, 20__, I requested ____and ____ to act as witnesses to my will; that I declared to them that the document was my last will; that I signed the will in the presence of both witnesses; that they signed the will as witnesses in my presence and in the presence of each other; that the will was read and explained to me (or read by me), after being prepared and before I signed it, and it clearly and accurately expresses my wishes; and that I willingly made and executed the will as my free and voluntary act for the purposes expressed in the will.

Testator

(b) Each attesting witness's affidavit must contain substantially the following content:

We, ____and ____, swear or affirm under penalty of perjury that on the __ day of ____, 20__, ____ of the State of ____, published and declared the attached document to be his/her last will, signed the will in the presence of both of us, and requested both of us to sign the will as witnesses; that we, in compliance with his/her request, signed the will as witnesses in his/her presence and in the presence of each other; and that the testator was not acting under duress, menace, fraud, or undue influence of any person, so far as we could determine, and in our opinion was mentally capable of disposing of all his/her estate by will.

Witness

Witness

Subscribed and sworn to or affirmed before me this __ day of ____, 20__, by ____ testator, and by ____ and ____, attesting witnesses.

(Title)

§ 15.10 Will the Secretary probate all the land or assets in an estate?

(a) We will probate only the trust or restricted land or trust personalty in an estate.

(b) We will not probate the following property:

(1) Real or personal property other than trust or restricted land or trust personalty in an estate of a decedent;

(2) Restricted land derived from allotments made to members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests owned by Osage decedents.

(c) We will probate that part of the estate of a deceased member of the Five Civilized Tribes or Osage Nation who

owns a trust interest in land or a restricted interest in land derived from an individual Indian who was a member of a tribe other than the Five Civilized Tribes or Osage Nation.

§ 15.11 What are the basic steps of the probate process?

The basic steps of the probate process are:

(a) We learn about a person's death (see subpart B for details);

(b) We prepare a probate file that includes documents sent to the agency (see subpart C for details);

(c) We refer the completed probate file to OHA for assignment to a judge or ADM (see subpart D for details); and

(d) The judge or ADM decides how to distribute any trust or restricted land and/or trust personalty, and we make the distribution (see subpart D for details).

§ 15.12 What happens if assets in a trust estate may be diminished or destroyed while the probate is pending?

(a) This section applies if an interested party or BIA:

(1) Learns of the death of a person owning trust or restricted property; and

(2) Believes that an emergency exists and the assets in the trust estate may be significantly diminished or destroyed before the final decision and order of a judge in a probate case.

(b) An interested party, the Superintendent, or other authorized representative of BIA has standing to request relief.

(c) The interested party or BIA representative may request:

(1) That OHA immediately assign a judge or ADM to the probate case;

(2) That BIA transfer a probate file to OHA containing sufficient information on potential interested parties and documentation concerning the alleged emergency for a judge to consider emergency relief in order to preserve estate assets; and

(3) That OHA hold an expedited hearing or consider ex parte relief to prevent impending or further loss or destruction of trust assets.

Subpart B—Starting the Probate Process

§ 15.101 When should I notify the agency of the death of a person owning trust or restricted property?

There is no deadline for notifying us of a death.

(a) Notify us as provided in § 15.103 to assure timely distribution of the estate.

(b) If we find out about the death of a person owning trust or restricted property we may initiate the process to collect the necessary documentation.

§ 15.102 Who may notify the agency of a death?

Anyone may notify us of a death.

§ 15.103 How do I begin the probate process?

As soon as possible, contact any of the following offices to inform us of the decedent's death:

(a) The agency or BIA regional office nearest to where the decedent was enrolled;

(b) Any agency or BIA regional office; or

(c) The Trust Beneficiary Call Center in OST.

§ 15.104 Does the agency need a death certificate to prepare a probate file?

(a) Yes. You must provide us with a certified copy of the death certificate if a death certificate exists. If necessary, we will make a copy from your certified copy for our use and return your copy.

(b) If a death certificate does not exist, you must provide an affidavit containing as much information as you have concerning the deceased, such as:

(1) The State, city, reservation, location, date, and cause of death;

(2) The last known address of the deceased;

(3) Names and addresses of others who may have information about the deceased; and

(4) Any other information available concerning the deceased, such as newspaper articles, an obituary, death notices, or a church or court record.

§ 15.105 What other documents does the agency need to prepare a probate file?

In addition to the certified copy of a death certificate or other reliable evidence of death listed in § 15.104, we need the following information and documents:

(a) Originals or copies of all wills, codicils, and revocations, or other evidence that a will may exist;

(b) The Social Security number of the decedent;

(c) The place of enrollment and the tribal enrollment or census number of the decedent and potential heirs or devisees;

(d) Current names and addresses of the decedent's potential heirs and devisees;

(e) Any sworn statements regarding the decedent's family, including any statements of paternity or maternity;

(f) Any statements renouncing an interest in the estate including identification of the person or entity in whose favor the interest is renounced, if any;

(g) A list of claims by known creditors of the decedent and their addresses, including copies of any court judgments; and

(h) Documents from the appropriate authorities, certified if possible, concerning the public record of the decedent, including but not limited to, any:

(1) Marriage licenses and certificates of the decedent;

(2) Divorce decrees of the decedent;

(3) Adoption and guardianship records concerning the decedent or the decedent's potential heirs or devisees;

(4) Use of other names by the decedent, including copies of name changes by court order; and

(5) Orders requiring payment of child support or spousal support.

§ 15.106 May a probate case be initiated when an owner of an interest has been absent?

(a) A probate case may be initiated when either:

(1) Information is provided to us that an owner of an interest in trust or restricted land or trust personalty has been absent without explanation for a period of at least 6 years; or

(2) We become aware of other facts or circumstances from which an inference may be drawn that the person has died.

(b) When we receive information as described in § 15.106(a), we may begin an investigation into the circumstances, and may attempt to locate the person. We may:

(1) Search available electronic databases;

(2) Inquire into other published information sources such as telephone directories and other available directories;

(3) Examine BIA land title and lease records;

(4) Examine the IIM account ledger for disbursements from the account; and

(5) Engage the services of an independent firm to conduct a search for the owner.

(c) When we have completed our investigation, if we are unable to locate the person, we may initiate a probate case and prepare a file that may include all the documentation developed in the search.

(d) We may file a claim in the probate case to recover the reasonable costs expended to contract with an independent firm to conduct the search.

§ 15.107 Who prepares a probate file?

The agency that serves the tribe where the decedent was an enrolled member will prepare the probate file in consultation with the potential heirs or devisees who can be located, and with other people who have information about the decedent or the estate.

§ 15.108 If the decedent was not an enrolled member of a tribe or was a member of more than one tribe, who prepares the probate file?

Unless otherwise provided by Federal law, the agency that has jurisdiction over the tribe with the strongest association with the decedent will serve as the home agency and will prepare the probate file if the decedent owned interests in trust or restricted land or trust personalty and either:

(a) Was not an enrolled member of a tribe; or

(b) Was a member of more than one tribe.

Subpart C—Preparing the Probate File

§ 15.201 What will the agency do with the documents that I provide?

After we receive notice of the death of a person owning trust or restricted land or trust personalty, we will examine the documents provided under §§ 15.104 and 15.105, and other documents and information provided to us to prepare a complete probate file. We may consult with you and other individuals or entities to obtain additional information to complete the probate file. Then we will transfer the probate file to OHA.

§ 15.202 What items must the agency include in the probate file?

We will include the items listed in this section in the probate file.

(a) The evidence of death of the decedent as provided under § 15.104.

(b) A completed ''Data for Heirship Findings and Family History Form'' or successor form, certified by BIA, with the enrollment or other identifying number shown for each potential heir or devisee.

(c) Information provided by potential heirs, devisees, or the tribes on:

(1) Whether the heirs and devisees meet the definition of ''Indian'' for probate purposes, including enrollment or eligibility for enrollment in a tribe; or

(2) Whether the potential heirs or devisees are within two degrees of consanguinity of an ''Indian.''

(d) If an individual qualifies as an Indian only because of ownership of a trust or restricted interest in land, the date on which the individual became the owner of the trust or restricted interest.

(e) A certified inventory of trust or restricted land, including:

(1) Accurate and adequate descriptions of all land and appurtenances; and

(2) Identification of any interests that represent less than 5 percent of the undivided interest in a parcel.

(f) A statement showing the balance and the source of funds in the decedent's IIM account on the date of death.

(g) A statement showing all receipts and sources of income to and disbursements, if any, from the decedent's IIM account after the date of death.

(h) Originals or copies of all wills, codicils, and revocations that have been provided to us.

(i) A copy of any statement or document concerning any wills, codicils, or revocations the BIA returned to the testator.

(j) Any statement renouncing an interest in the estate that has been submitted to us, and the information necessary to identify any person receiving a renounced interest.

(k) Claims of creditors that have been submitted to us under § 15.302 through 15.305, including documentation required by § 15.305.

(l) Documentation of any payments made on requests filed under the provisions of § 15.301.

(m) All the documents acquired under § 15.105.

(n) The record of each tribal or individual request to purchase a trust or restricted land interest at probate.

(o) The record of any individual request for a consolidation agreement, including a description, such as an Individual/Tribal Interest Report, of any lands not part of the decedent's estate that are proposed for inclusion in the consolidation agreement.

§ 15.203 What information must tribes provide BIA to complete the probate file?

Tribes must provide any information that we require or request to complete the probate file. This information may include enrollment and family history data or property title documents that pertain to any pending probate matter.

§ 15.204 When is a probate file complete?

A probate file is complete for transfer to OHA when a BIA approving official includes a certification that:

(a) States that the probate file includes all information listed in § 15.202 that is available; and

(b) Lists all sources of information BIA queried in an attempt to locate information listed in § 15.202 that is not available.

Subpart D—Obtaining Emergency Assistance and Filing Claims

§ 15.301 May I receive funds from the decedent's IIM account for funeral services?

(a) You may request an amount of no more than $1,000 from the decedent's IIM account if:

(1) You are responsible for making the funeral arrangements on behalf of the family of a decedent who had an IIM account;

(2) You have an immediate need to pay for funeral arrangements before burial; and

(3) The decedent's IIM account contains more than $2,500 on the date of death.

(b) You must apply for funds under paragraph (a) of this section and submit to us an original itemized estimate of the cost of the service to be rendered and the identification of the service provider.

(c) We may approve reasonable costs of no more than $1,000 that are necessary for the burial services, taking into consideration:

(1) The total amount in the IIM account;

(2) The availability of non-trust funds; and

(3) Any other relevant factors.

(d) We will make payments directly to the providers of the services.

§ 15.302 May I file a claim against an estate?

If a decedent owed you money, you may make a claim against the estate of the decedent.

§ 15.303 Where may I file my claim against an estate?

(a) You may submit your claim to us before we transfer the probate file to OHA or you may file your claim with OHA after the probate file has been transferred if you comply with 43 CFR 30.140 through 30.148.

(b) If we receive your claim after the probate file has been transmitted to OHA but before the order is issued, we will promptly transmit your claim to OHA.

§ 15.304 When must I file my claim?

You must file your claim before the conclusion of the first hearing by OHA or, for cases designated as summary probate proceedings, as allowed under 43 CFR 30.140. Claims not timely filed will be barred.

§ 15.305 What must I include with my claim?

(a) You must include an itemized statement of the claim, including copies of any supporting documents such as signed notes, account records, billing records, and journal entries. The itemized statement must also include:

(1) The date and amount of the original debt;

(2) The dates, amounts, and identity of the payor for any payments made;

(3) The dates, amounts, product or service, and identity of any person making charges on the account;

(4) The balance remaining on the debt on the date of the decedent's death; and

(5) Any evidence that the decedent disputed the amount of the claim.

(b) You must submit an affidavit that verifies the balance due and states whether:

(1) Parties other than the decedent are responsible for any portion of the debt alleged;

(2) Any known or claimed offsets to the alleged debt exist;

(3) The creditor or anyone on behalf of the creditor has filed a claim or sought reimbursement against the decedent's non-trust or non-restricted property in any other judicial or quasi-judicial proceeding, and the status of such action; and

(4) The creditor or anyone on behalf of the creditor has filed a claim or sought reimbursement against the decedent's trust or restricted property in any other judicial or quasi-judicial proceeding, and the status of such action.

(c) A secured creditor must first exhaust the security before a claim against trust personalty for any deficiency will be allowed. You must submit a verified or certified copy of any judgment or other documents that establish the amount of the deficiency after exhaustion of the security.

Subpart E—Probate Processing and Distributions

§ 15.401 What happens after BIA prepares the probate file?

Within 30 days after we assemble all the documents required by §§ 15.202 and 15.204, we will:

(a) Refer the case and send the probate file to OHA for adjudication in accordance with 43 CFR part 30; and

(b) Forward a list of fractional interests that represent less than 5 percent of the entire undivided ownership of each parcel of land in the decedent's estate to the tribes with jurisdiction over those interests.

§ 15.402 What happens after the probate file is referred to OHA?

When OHA receives the probate file from BIA, it will assign the case to a judge or ADM. The judge or ADM will conduct the probate proceeding and issue a written decision or order, in accordance with 43 CFR part 30.

§ 15.403 What happens after the probate order is issued?

(a) If the probate decision or order is issued by an ADM, you have 30 days from the decision mailing date to file a written request for a de novo review.

(b) If the probate decision or order is issued by a judge, you have 30 days from the decision mailing date to file a written request for rehearing. After a judge's decision on rehearing, you have 30 days from the mailing date of the decision to file an appeal, in accordance with 43 CFR parts 4 and 30.

(c) When any interested party files a timely request for de novo review, a request for rehearing, or an appeal, we will not pay claims, transfer title to land, or distribute trust personalty until the request or appeal is resolved.

(d) If no interested party files a request or appeal within the 30-day deadlines in paragraphs (a) and (b) of this section, we will wait at least 15 additional days before paying claims, transferring title to land, and distributing trust personalty. At that time:

(1) The LTRO will change the land title records for the trust and restricted land in accordance with the final decision or order; and

(2) We will pay claims and distribute funds from the IIM account in accordance with the final decision or order.

Subpart F—Information and Records

§ 15.501 How may I find out the status of a probate?

You may get information about the status of an Indian probate by contacting any BIA agency or regional office, an OST fiduciary trust officer, OHA, or the Trust Beneficiary Call Center in OST.

§ 15.502 Who owns the records associated with this part?

(a) The United States owns the records associated with this part if:

(1) They are evidence of the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part; and

(2) They are either:

(i) Made by or on behalf of the United States; or

(ii) Made or received by a tribe or tribal organization in the conduct of a Federal trust function under this part, including the operation of a trust program under Pub. L. 93–638, as amended, and as codified at 25 U.S.C. 450 *et seq.*

(b) The tribe owns the records associated with this part if they:

(1) Are not covered by paragraph (a) of this section; and

(2) Are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part.

§ 15.503 How must records associated with this part be preserved?

(a) Any organization that has records identified in § 15.502(a), including tribes and tribal organizations, must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. chapters 29, 31, and 33; and

(b) A tribe or tribal organization must preserve the records identified in § 15.502(b) for the period authorized by the Archivist of the United States for similar Department of the Interior records under 44 U.S.C. chapter 33. If a tribe or tribal organization does not do so, it may be unable to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons affected by its activities.

§ 15.504 Who may inspect records and records management practices?

(a) You may inspect the probate file at the relevant agency before the file is transferred to OHA. Access to records in the probate file is governed by 25 U.S.C. 2216(e), the Privacy Act, and the Freedom of Information Act.

(b) The Secretary and the Archivist of the United States may inspect records and records management practices and safeguards required under the Federal Records Act.

§ 15.505 How does the Paperwork Reduction Act affect this part?

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0169. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to a collection of information unless the form or regulation requesting the information has a currently valid OMB Control Number.

■ 2. Add part 18 to subchapter C to read as follows:

PART 18—TRIBAL PROBATE CODES

Subpart A—General Provisions

Sec.

18.1 What is the purpose of this part?
18.2 What definitions do I need to know?

Subpart B—Approval of Tribal Probate Codes

18.101 May a tribe create and adopt its own tribal probate code?
18.102 When must a tribe submit its tribal probate code to the Department for approval?
18.103 Which provisions within a tribal probate code require the Department's approval?
18.104 May a tribe include provisions in its tribal probate code regarding the descent and distribution of trust personalty?

18.105 How does a tribe request approval for a tribal probate code?
18.106 What will the Department consider in the approval process?
18.107 When will the Department approve or disapprove a tribal probate code?
18.108 What happens if the Department approves the tribal probate code?
18.109 How will a tribe be notified of the disapproval of a tribal probate code?
18.110 When will a tribal probate code become effective?
18.111 What will happen if a tribe repeals its probate code?
18.112 May a tribe appeal the approval or disapproval of a probate code?

Subpart C—Approval of Tribal Probate Code Amendments

18.201 May a tribe amend a tribal probate code?
18.202 How does a tribe request approval for a tribal probate code amendment?
18.203 Which probate code amendments require approval?
18.204 When will the Department approve an amendment?
18.205 What happens if the Department approves the amendment?
18.206 How will the tribe be notified of disapproval of the amendment?
18.207 When do amendments to tribal probate codes become effective?
18.208 May a tribe appeal an approval or disapproval of a probate code amendment?

Subpart D—Approval of Single Heir Rule

18.301 May a tribe create and adopt a single heir rule without adopting a tribal probate code?
18.302 How does the tribe request approval for the single heir rule?
18.303 When will the Department approve or disapprove a single heir rule?
18.304 What happens if the Department approves a single heir rule?
18.305 How will a tribe be notified of the disapproval of a single heir rule?
18.306 When does the single heir rule become effective?
18.307 May a tribe appeal approval or disapproval of a single heir rule?

Subpart E—Information and Records

18.401 How does the Paperwork Reduction Act affect this part?

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410, 2201 *et seq.*; 44 U.S.C. 3101 *et seq.*; 25 CFR part 15; 43 CFR part 4.

Subpart A—General Provisions

§ 18.1 What is the purpose of this part?

This part establishes the Department's policies and procedures for reviewing and approving or disapproving tribal probate codes, amendments, and single heir rules that contain provisions regarding the descent and distribution of trust and restricted lands.

§ 18.2 What definitions do I need to know?

Act means the Indian Land Consolidation Act and its amendments, including the American Indian Probate Reform Act of 2004 (AIPRA), Public Law 108–374, as codified at 25 U.S.C. 2201 *et seq.*

Day means a calendar day.

Decedent means a person who is deceased.

Department means the Department of the Interior.

Devise means a gift of property by will. Also, to give property by will.

Devisee means a person or entity that receives property under a will.

Indian means, for the purposes of the Act:

(1) Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any federally recognized Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under 25 U.S.C. 479; or

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

Intestate means that the decedent died without a will.

OHA means the Office of Hearings and Appeals within the Department of the Interior.

Restricted lands means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the purpose of probate proceedings, restricted lands are treated as if they were trust lands. Except as the law may provide otherwise, the term ''restricted lands'' as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

Testator means a person who has executed a will.

Trust lands means real property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

Trust personalty means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

We or *us* means the Secretary or an authorized representative of the Secretary.

Subpart B—Approval of Tribal Probate Codes

§ 18.101 May a tribe create and adopt its own tribal probate code?

Yes. A tribe may create and adopt a tribal probate code.

§ 18.102 When must a tribe submit its tribal probate code to the Department for approval?

The tribe must submit its probate code to the Department for approval if the tribal probate code contains provisions regarding the descent and distribution of trust and restricted lands.

§ 18.103 Which provisions within a tribal probate code require the Department's approval?

Only those tribal probate code provisions regarding the descent and distribution of trust and restricted lands require the Department's approval.

§ 18.104 May a tribe include provisions in its tribal probate code regarding the distribution and descent of trust personalty?

No. All trust personalty will be distributed in accordance with the American Indian Probate Reform Act of 2004, as amended.

§ 18.105 How does a tribe request approval for a tribal probate code?

The tribe must submit the tribal probate code and a duly executed tribal resolution adopting the code to the Assistant Secretary—Indian Affairs, Attn: Tribal Probate Code, 1849 C Street, NW., Washington, DC 20240, for review and approval or disapproval.

§ 18.106 What will the Department consider in the approval process?

A tribal probate code must meet the requirements of this section in order to receive our approval under this part.

(a) The code must be consistent with Federal law.

(b) The code must promote the policies of the Indian Land Consolidation Act (ILCA) Amendments of 2000, which are to:

(1) Prevent further fractionation;

(2) Consolidate fractional interests into useable parcels;

(3) Consolidate fractional interests to enhance tribal sovereignty;

(4) Promote tribal self-sufficiency and self-determination; and

(5) Reverse the effects of the allotment policy on Indian tribes.

(c) Unless the conditions in paragraph (d) of this section are met, the code must not prohibit the devise of an interest to:

(1) An Indian lineal descendant of the original allottee; or

(2) An Indian who is not a member of the Indian tribe with jurisdiction over the interest in the land.

(d) If the tribal probate code prohibits the devise of an interest to the devisees in paragraph (c)(1) or (c)(2) of this section, then the code must:

(1) Allow those devisees to renounce their interests in favor of eligible

devisees as defined by the tribal probate code;

(2) Allow a devisee who is the spouse or lineal descendant of the testator to reserve a life estate without regard to waste; and

(3) Require the payment of fair market value as determined by the Department on the date of the decedent's death.

§ 18.107 When will the Department approve or disapprove a tribal probate code?

(a) We have 180 days from receipt by the Assistant Secretary—Indian Affairs of a submitted tribal probate code and duly executed tribal resolution adopting the tribal probate code to approve or disapprove a tribal probate code.

(b) If we do not meet the deadline in paragraph (a) of this section, the tribal probate code will be deemed approved, but only to the extent that it:

(1) Is consistent with Federal law; and

(2) Promotes the policies of the ILCA Amendments of 2000 as listed in § 18.106(b).

§ 18.108 What happens if the Department approves the tribal probate code?

Our approval applies only to those sections of the tribal probate code that govern the descent and distribution of trust or restricted land. We will notify the tribe of the approval and forward a copy of the tribal probate code to OHA.

§ 18.109 How will a tribe be notified of the disapproval of a tribal probate code?

If we disapprove a tribal probate code, we must provide the tribe with a written notification of the disapproval that includes an explanation of the reasons for the disapproval.

§ 18.110 When will a tribal probate code become effective?

(a) A tribal probate code may not become effective sooner than 180 days after the date of approval by the Department.

(b) If a tribal probate code is deemed approved through inaction by the Department, then the code will become effective 180 days after it is deemed approved.

(c) The tribal probate code will apply only to the estate of a decedent who dies on or after the effective date of the tribal probate code.

§ 18.111 What will happen if a tribe repeals its probate code?

If a tribe repeals its tribal probate code:

(a) The repeal will not become effective sooner than 180 days from the date we receive notification from the tribe of its decision to repeal the code; and

(b) We will forward a copy of the repeal to OHA.

§ 18.112 May a tribe appeal the approval or disapproval of a probate code?

No. There is no right of appeal within the Department from a decision to approve or disapprove a tribal probate code.

Subpart C—Approval of Tribal Probate Code Amendments

§ 18.201 May a tribe amend a tribal probate code?

Yes. A tribe may amend a tribal probate code.

§ 18.202 How does a tribe request approval for a tribal probate code amendment?

To amend a tribal probate code, the tribe must follow the same procedures as for submitting a tribal probate code to the Department for approval.

§ 18.203 Which probate code amendments require approval?

Only those tribal probate code amendments regarding the descent and distribution of trust and restricted lands require the Department's approval.

§ 18.204 When will the Department approve an amendment?

(a) We have 60 days from receipt by the Assistant Secretary of a submitted amendment to approve or disapprove the amendment.

(b) If we do not meet the deadline in paragraphs (a) of this section, the amendment will be deemed approved, but only to the extent that it:

(1) Is consistent with Federal law; and

(2) Promotes the policies of the ILCA Amendments of 2000 as listed in § 18.106(b).

§ 18.205 What happens if the Department approves the amendment?

Our approval applies only to those sections of the amendment that contain provisions regarding the descent and distribution of trust or restricted land. We will notify the tribe of the approval and forward a copy of the amendment to OHA.

§ 18.206 How will a tribe be notified of the disapproval of an amendment?

If we disapprove an amendment, we must provide the tribe with a written notification of the disapproval that includes an explanation of the reasons for the disapproval.

§ 18.207 When do amendments to a tribal probate code become effective?

(a) An amendment may not become effective sooner than 180 days after the date of approval by the Department.

(b) If an amendment is deemed approved through inaction by the Department, then the amendment will become effective 180 days after it is deemed approved.

(c) The amendment will apply only to the estate of a decedent who dies on or after the effective date of the amendment.

§ 18.208 May a tribe appeal an approval or disapproval of a probate code amendment?

No. There is no right of appeal within the Department from a decision to approve or disapprove a tribal probate code amendment.

Subpart D—Approval of Single Heir Rule

§ 18.301 May a tribe create and adopt a single heir rule without adopting a tribal probate code?

Yes. A tribe may create and adopt a single heir rule for intestate succession. The single heir rule may specify a single recipient other than the one specified in 25 U.S.C. 2206(a)(2)(D).

§ 18.302 How does the tribe request approval for the single heir rule?

The tribe must follow the same procedures as for submitting a tribal probate code to the Department for approval.

§ 18.303 When will the Department approve or disapprove a single heir rule?

We have 90 days from receipt by the Assistant Secretary of a single heir rule submitted separate from a tribal probate code to approve or disapprove a single heir rule.

§ 18.304 What happens if the Department approves the single heir rule?

If we approve the single heir rule, we will notify the tribe of the approval and forward a copy of the single heir rule to OHA.

§ 18.305 How will a tribe be notified of the disapproval of a single heir rule?

If we disapprove a single heir rule, we must provide the tribe with a written notification of the disapproval that includes an explanation of the reasons for the disapproval.

§ 18.306 When does the single heir rule become effective?

(a) A single heir rule may not become effective sooner than 180 days after the date of approval by the Department.

(b) If a single heir rule is deemed approved through inaction by the Department, then the single heir rule will become effective 180 days after it is deemed approved.

(c) The single heir rule will apply only to the estate of a decedent who dies

on or after the effective date of the single heir rule.

§ 18.307 May a tribe appeal approval or disapproval of a single heir rule?

No. There is no right of appeal within the Department from a decision to approve or disapprove a single heir rule.

Subpart E—Information and Records

§ 18.401 How does the Paperwork Reduction Act affect this part?

The collection of information contained in this part has been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and assigned OMB Control Number 1076–0168. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and members of the public are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number.

■ 3. Revise part 179 to read as follows:

PART 179—LIFE ESTATES AND FUTURE INTERESTS

Subpart A—General

Sec.
179.1 What is the purpose of this part?
179.2 What definitions do I need to know?
179.3 What law applies to life estates?
179.4 When does a life estate terminate?
179.5 What documents will the BIA use to record termination of a life estate?

Subpart B—Life Estates Not Created Under AIPRA

179.101 How does the Secretary distribute principal and income to the holder of a life estate?
179.102 How does the Secretary calculate the value of a remainder and a life estate?

Subpart C—Life Estates Created Under AIPRA

179.201 How does the Secretary distribute principal and income to the holder of a life estate without regard to waste?
179.202 Can the holder of a life tenancy without regard to waste deplete the resources?

Authority: 86 Stat. 530; 86 Stat. 744; 94 Stat. 537; 96 Stat. 2515; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201 *et seq.*

Subpart A—General

§ 179.1 What is the purpose of this part?

This part contains the authorities, policies, and procedures governing the administration of life estates and future interests in trust and restricted property by the Secretary of Interior. This part does not apply to any use rights assigned to tribal members by tribes in the exercise of their jurisdiction over tribal lands.

(a) Subpart A contains general provisions.

(b) Subpart B describes life estates not created under the American Indian Probate Reform Act of 2004 (AIPRA), as described in § 179.3(b).

(c) Subpart C describes life estates created under AIPRA, as described in § 179.3(a).

§ 179.2 What definitions do I need to know?

Agency means the Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted property. This term also means any office of a tribe that has entered into a contract or compact to fulfill applicable BIA functions.

AIPRA means the American Indian Probate Reform Act of 2004, Pub. L. 108–374, as codified at 25 U.S.C. 2201 *et seq.*

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

Contract bonus means cash consideration paid or agreed to be paid as incentive for execution of a contract.

Income means the rents and profits of real property and the interest on invested principal.

Life estate means an interest in property held for only the duration of a designated person's life. A life estate may be created by a conveyance document or by operation of law.

Life estate without regard to waste means that the holder of the life estate interest in land is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.

Principal means the corpus and capital of an estate, including any payment received for the sale or diminishment of the corpus, as opposed to the income.

Rents and profits means the income or profit arising from the ownership or possession of property.

Restricted property means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the purpose of probate proceedings, restricted property is treated as if it were trust property.

Except as the law may provide otherwise, the term ''restricted property'' as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

Secretary means the Secretary of the Interior or authorized representative.

Trust property means real property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

§ 179.3 What law applies to life estates?

(a) AIPRA applies to life estates created by operation of law under AIPRA for an individual who died on or after June 20, 2006, owning trust or restricted property.

(b) In the absence of Federal law or federally approved tribal law to the contrary, State law applies to all other life estates.

§ 179.4 When does a life estate terminate?

A life estate terminates upon relinquishment or upon the death of the measuring life.

§ 179.5 What documents will BIA use to record termination of a life estate?

The Agency will file a copy of the relinquishment of the interest or death certificate with the BIA Land Title and Records Office for recording upon receipt of one of the following:

(a) The life estate holder's relinquishment of an interest in trust or restricted property; or

(b) Notice of death of a person who is the measuring life for the life estate in trust or restricted property.

Subpart B—Life Estates Not Created Under AIPRA

§ 179.101 How does the Secretary distribute principal and income to the holder of a life estate?

(a) This section applies to the following cases:

(1) Where the document creating the life estate does not specify a distribution of proceeds;

(2) Where the vested holders of remainder interests and the life tenant have not entered into a written agreement approved by the Secretary providing for the distribution of proceeds; or

(3) Where, by the document or agreement or by the application of State law, the open mine doctrine does not apply.

(b) In all cases listed in paragraph (a) of this section, the Secretary must do the following:

(1) Distribute all rents and profits, as income, to the life tenant;

(2) Distribute any contract bonus one-half each to the life tenant and the remainderman;

(3) In the case of mineral contracts:

(i) Invest the principal, with interest income to be paid to the life tenant during the life estate, except in those instances where the administrative cost of investment is disproportionately

high, in which case paragraph (b)(4) of this section applies; and

(ii) Distribute the principal to the remainderman upon termination of the life estate; and

(4) In all other instances:

(i) Distribute the principal immediately according to § 179.102; and

(ii) Invest all proceeds attributable to any contingent remainderman in an account, with disbursement to take place upon determination of the contingent remainderman.

§ 179.102 How does the Secretary calculate the value of a remainder and a life estate?

(a) If income is subject to division, the Secretary will use Actuarial Table S, Valuation of Annuities, found at 26 CFR 20.2031, to determine the value of the interests of the holders of remainder interests and the life tenant.

(b) Actuarial Table S, Valuation of Annuities, specifies the share attributable to the life estate and remainder interests, given the age of the life tenant and an established rate of return published by the Secretary in the **Federal Register**. We may periodically review and revise the percent rate of return to be used to determine the share attributable to the interests of the life tenant and the holders of remainder interests. The life tenant will receive the balance of the distribution after the shares of the holders of remainder interests have been calculated.

Subpart C—Life Estates Created Under AIPRA

§ 179.201 How does the Secretary distribute principal and income to the holder of a life estate without regard to waste?

The Secretary must distribute all income, including bonuses and royalties, to the life estate holder to the exclusion of any holders of remainder interests.

§ 179.202 May the holder of a life estate without regard to waste deplete the resources?

Yes. The holder of a life estate without regard to waste may cause lawful depletion or benefit from the lawful depletion of the resources. However, a holder of a life estate without regard to waste may not cause or allow damage to the trust property through culpable negligence or an affirmative act of malicious destruction that causes damage to the prejudice of the holders of remainder interests.

TITLE 43—PUBLIC LANDS: INTERIOR

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

■ 4. Revise the authority citation for part 4 to read as follows:

Authority: 5 U.S.C. 301, 503–504; 25 U.S.C. 9, 372–74, 410, 2201 *et seq.*; 43 U.S.C. 1201, 1457; Pub. L. 99–264, 100 Stat. 61, as amended.

■ 5. Revise the cross reference for part 4, subpart D, to read as follows:

Cross reference: For regulations pertaining to the processing of Indian probate matters within the Bureau of Indian Affairs, see 25 CFR part 15. For regulations pertaining to the probate of Indian trust estates within the Probate Hearings Division, Office of Hearings and Appeals, see 43 CFR part 30. For regulations pertaining to the authority, jurisdiction, and membership of the Board of Indian Appeals, Office of Hearings and Appeals, see subpart A of this part. For regulations generally applicable to proceedings before the Hearings Divisions and Appeal Boards of the Office of Hearings and Appeals, see subpart B of this part.

■ 6. In subpart D, remove undesignated center heading, ''Determination 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.''

■ 7. Revise §§ 4.200 and 4.201 to read as follows:

§ 4.200 How to use this subpart.

(a) The following table is a guide to the relevant contents of this subpart by subject matter.

For provisions relating to . . .	Consult . . .
(1) Appeals to the Board of Indian Appeals generally	§§ 4.310 through 4.318.
(2) Appeals to the Board of Indian Appeals from decisions of the Probate Hearings Division in Indian probate matters.	§§ 4.201 and 4.320 through 4.326.
(3) Appeals to the Board of Indian Appeals from actions or decisions of BIA	§§ 4.201 and 4.330 through 4.340.
(4) Review by the Board of Indian Appeals of other matters referred to it by the Secretary, Assistant Secretary-Indian Affairs, or Director-Office of Hearings and Appeals.	§§ 4.201 and 4.330 through 4.340.
(5) Determinations under the White Earth Reservation Land Settlement Act of 1985	§§ 4.350 through 4.357.

(b) Except as limited by the provisions of this part, the regulations in subparts A and B of this part apply to these proceedings.

§ 4.201 Definitions.

Administrative law judge (ALJ) means an administrative law judge with OHA appointed under the Administrative Procedure Act, 5 U.S.C. 3105.

Agency means:

(1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust personalty; and

(2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

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

Board means the Interior Board of Indian Appeals within OHA.

Day means a calendar day.

Decedent means a person who is deceased.

Decision or order (or *decision and order*) means:

(1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personalty;

(2) The decision issued by an attorney decision maker in a summary probate proceeding; or

(3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is deceased by reason of unexplained absence.

Devise means a gift of property by will. Also, to give property by will.

Devisee means a person or entity that receives property under a will.

Estate means the trust or restricted land and trust personalty owned by the decedent at the time of death.

Formal probate proceeding means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

Heir means any individual or entity eligible to receive property from a decedent in an intestate proceeding.

Individual Indian Money (IIM) account means an interest-bearing account for trust funds held by the Secretary that belong to a person who

has an interest in trust assets. These accounts are under the control and management of the Secretary.

Indian probate judge (IPJ) means an attorney with OHA, other than an ALJ, to whom the Secretary has delegated the authority to hear and decide Indian probate cases.

Interested party means any of the following:

(1) Any potential or actual heir;

(2) Any devisee under a will;

(3) Any person or entity asserting a claim against a decedent's estate;

(4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or

(5) Any co-owner exercising a purchase option.

Intestate means that the decedent died without a valid will as determined in the probate proceeding.

Judge, except as used in the term ''administrative judge,'' means an ALJ or IPJ.

LTRO means the Land Titles and Records Office within BIA.

Probate means the legal process by which applicable tribal, Federal, or State law that affects the distribution of a decedent's estate is applied in order to:

(1) Determine the heirs;

(2) Determine the validity of wills and determine devisees;

(3) Determine whether claims against the estate will be paid from trust personalty; and

(4) Order the transfer of any trust or restricted land or trust personalty to the heirs, devisees, or other persons or entities entitled by law to receive them.

Restricted property means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the purposes of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term ''restricted property'' as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

Secretary means the Secretary of the Interior or an authorized representative.

Trust personalty means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

Trust property means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

Will means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

■ 8. Remove and reserve §§ 4.202 through 4.308, along with their undesignated center headings.

■ 9. Revise § 4.320 to read as follows:

§ 4.320 Who may appeal a judge's decision or order?

Any interested party has a right to appeal to the Board if he or she is adversely affected by a decision or order of a judge under part 30 of this subtitle:

(a) On a petition for rehearing;

(b) On a petition for reopening;

(c) Regarding purchase of interests in a deceased Indian's trust estate; or

(d) Regarding modification of the inventory of a trust estate.

■ 10. Redesignate §§ 4.321 through 4.323 as §§ 4.324 through 4.326 and add new §§ 4.321 through 4.323 to read as follows:

§ 4.321 How do I appeal a judge's decision or order?

(a) A person wishing to appeal a decision or order within the scope of § 4.320 must file a written notice of appeal within 30 days after we have mailed the judge's decision or order and accurate appeal instructions. We will dismiss any appeal not filed by this deadline.

(b) The notice of appeal must be signed by the appellant, the appellant's attorney, or other qualified representative as provided in § 1.3 of this subtitle, and must be filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

§ 4.322 What must an appeal contain?

(a) Each appeal must contain a written statement of the errors of fact and law upon which the appeal is based. This statement may be included in either the notice of appeal filed under § 4.321(a) or an opening brief filed under § 4.311(a).

(b) The notice of appeal must include the names and addresses of the parties served.

§ 4.323 Who receives service of the notice of appeal?

(a) The appellant must deliver or mail the original notice of appeal to the Board.

(b) A copy of the notice of appeal must be served on the judge whose decision is being appealed, as well as on every other interested party.

(c) The notice of appeal filed with the Board must include a certification that service was made as required by this section.

■ 11. Revise redesignated §§ 4.234 through 4.236 to read as follows:

§ 4.324 How is the record on appeal prepared?

(a) On receiving a copy of the notice of appeal, the judge whose decision is being appealed must notify the agency concerned, which must return the duplicate record filed under subpart J of part 30 of this subtitle to the designated LTRO.

(b) The LTRO must conform the duplicate record to the original. Thereafter, the duplicate record will be available for inspection either at the LTRO or at the agency.

(c) If a transcript of the hearing was not prepared, the judge must have a transcript prepared and forwarded to the LTRO within 30 days after receiving a copy of the notice of appeal. The LTRO must include the original of the transcript in the record and make a copy of the transcript for the duplicate record.

(d) Within 30 days of the receipt of the transcript, the LTRO must prepare a table of contents for the record, certify that the record is complete, and forward the certified original record on appeal, together with the table of contents, to the Board by certified mail.

(e) Any party may file an objection to the record. The party must file his or her objection with the Board within 15 days after receiving the notice of docketing under § 4.325.

(f) For any of the following appeals, the judge must prepare an administrative record for the decision and a table of contents for the record and must forward them to the Board:

(1) An interlocutory appeal under § 4.28;

(2) An appeal from a decision under §§ 30.126 or 30.127 regarding modification of an inventory of an estate; or

(3) An appeal from a decision under § 30.124 determining that a person for whom a probate proceeding is sought to be opened is not deceased.

§ 4.325 How will the appeal be docketed?

The Board will docket the appeal on receiving the probate record from the LTRO or the administrative record from the judge, and will provide a notice of the docketing and the table of contents for the record to all interested parties as shown by the record on appeal. The docketing notice will specify the deadline for filing briefs and will cite the procedural regulations governing the appeal.

§ 4.326 What happens to the record after disposition?

(a) After the Board makes a decision other than a remand, it must forward to the designated LTRO:

(1) The record filed with the Board under § 4.324(d) or (f); and

(2) All documents added during the appeal proceedings, including any transcripts and the Board's decision.

(b) The LTRO must conform the duplicate record retained under § 4.324(b) to the original sent under paragraph (a) of this section and forward the duplicate record to the agency concerned.

■ 12. Add a new part 30 to read as follows:

PART 30—INDIAN PROBATE HEARINGS PROCEDURES

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30.216 How do I obtain permission to take depositions?
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30.224 May a judge compel a witness to appear and testify at a hearing or deposition?
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30.229 When will testimony be required for approval of a will, codicil, or revocation?
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Authority: 5 U.S.C. 301, 503; 25 U.S.C. 9, 372–74, 410, 2201 *et seq.*; 43 U.S.C. 1201, 1457.

Cross reference: For regulations pertaining to the processing of Indian probate matters within the Bureau of Indian Affairs, see 25 CFR part 15. For regulations pertaining to the appeal of decisions of the Probate Hearings Division, Office of Hearings and Appeals, to the Board of Indian Appeals, Office of Hearings and Appeals, see 43 CFR part 4, subpart D. For regulations generally applicable to proceedings before the Hearings Divisions and Appeal Boards of the Office of Hearings and Appeals, see 43 CFR part 4, subpart B.

Subpart A—Scope of Part; Definitions

§ 30.100 How do I use this part?

(a) The following table is a guide to the relevant contents of this part by subject matter.

For provisions relating to . . .	consult . . .
(1) All proceedings in part 30	§§ 30.100 through 30.102.
(2) Claims against probate estate	§§ 30.140 through 30.148.
(3) Commencement of probate	§§ 30.110 through 30.115.
(4) Consolidation of interests	§§ 30.150 through 30.153.
(5) Formal probate proceedings before an administrative law judge or Indian probate judge.	§§ 30.210 through 30.246.
(6) Probate of trust estates of Indians who die possessed of trust property.	All sections except §§ 30.260 through 30.274.
(7) Purchases at probate	§§ 30.160 through 30.175.
(8) Renunciation of interests	§§ 30.180 through 30.188.
(9) Summary probate proceedings before an attorney decision maker	§§ 30.200 through 30.207.
(10) Tribal purchase of certain property interests of decedents under special laws applicable to particular tribes.	§§ 30.260 through 30.274.

(b) Except as limited by the provisions of this part, the regulations in part 4, subparts A and B of this subtitle apply to these proceedings.

(c) The following provisions do not apply to Alaska property interests:

(1) § 30.151;

(2) §§ 30.160 through 30.175;

(3) § 30.182 through 30.185, except for § 30.184(c);

(4) § 30.213; and

(5) § 30.214(f) and (g).

§ 30.101 What definitions do I need to know?

Act means the Indian Land Consolidation Act and its amendments, including the American Indian Probate Reform Act of 2004 (AIPRA), Public Law 108–374, as codified at 25 U.S.C. 2201 *et seq.*

Administrative law judge (ALJ) means an administrative law judge with OHA appointed under the Administrative Procedure Act, 5 U.S.C. 3105.

Affidavit means a written declaration of facts by a person that is signed by that person, swearing or affirming under penalty of perjury that the facts declared are true and correct to the best of that person's knowledge and belief.

Agency means:

(1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust personalty; and

(2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

Attorney decision maker (ADM) means an attorney with OHA who conducts a summary proceeding and renders a decision that is subject to de novo review by an administrative law judge or Indian probate judge.

BIA means the Bureau of Indian Affairs within the Department.

BLM means the Bureau of Land Management within the Department.

Board means the Interior Board of Indian Appeals within OHA.

Chief ALJ means the Chief Administrative Law Judge, Probate Hearings Division, OHA.

Child means a natural or adopted child.

Codicil means a supplement or addition to a will, executed with the same formalities as a will. It may explain, modify, add to, or revoke provisions in an existing will.

Consolidation agreement means a written agreement under the provisions of 25 U.S.C. 2206(e) or 2206(j)(9), entered during the probate process, approved by the judge, and implemented by the probate order, by which a decedent's heirs and devisees consolidate interests in trust or restricted land.

Creditor means any individual or entity that has a claim for payment from a decedent's estate.

Day means a calendar day.

Decedent means a person who is deceased.

Decision or order (or *decision and order*) means:

(1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personalty;

(2) The decision issued by an ADM in a summary probate proceeding; or

(3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is deceased by reason of unexplained absence.

De novo review means a process in which an administrative law judge or Indian probate judge, without regard to the decision previously issued in the case, will:

(1) Review all the relevant facts and issues in a probate case;

(2) Reconsider the evidence introduced at a previous hearing;

(3) Conduct a formal hearing as necessary or appropriate; and

(4) Issue a decision.

Department means the Department of the Interior.

Deposition means a proceeding in which a party takes testimony from a witness during discovery.

Devise means a gift of property by will. Also, to give property by will.

Devisee means a person or entity that receives property under a will.

Discovery means a process through which a party to a probate proceeding obtains information from another party. Examples of discovery include interrogatories, depositions, requests for admission, and requests for production of documents.

Eligible heir means, for the purposes of the Act, any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are:

(1) Indian;

(2) Lineal descendents within two degrees of consanguinity of an Indian; or

(3) Owners of a trust or restricted interest in a parcel of land for purposes of inheriting—by descent, renunciation, or consolidation agreement—another trust or restricted interest in such a parcel from the decedent.

Estate means the trust or restricted land and trust personalty owned by the decedent at the time of death.

Formal probate proceeding means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

Heir means any individual or entity eligible to receive property from a decedent in an intestate proceeding.

Individual Indian Money (IIM) account means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary.

Indian means, for the purposes of the Act:

(1) Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any federally recognized Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under 25 U.S.C. 479; or

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

Indian probate judge (IPJ) means an attorney with OHA, other than an ALJ, to whom the Secretary has delegated the authority to hear and decide Indian probate cases.

Interested party means:

(1) Any potential or actual heir;

(2) Any devisee under a will;

(3) Any person or entity asserting a claim against a decedent's estate;

(4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or

(5) Any co-owner exercising a purchase option.

Interrogatories means written questions submitted to another party for responses as part of discovery.

Intestate means that the decedent died without a valid will as determined in the probate proceeding.

Judge means an ALJ or IPJ.

Lockbox means a centralized system within OST for receiving and depositing trust fund remittances collected by BIA.

LTRO means the Land Titles and Records Office within BIA.

Master means a person who has been specially appointed by a judge to assist with the probate proceedings.

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

OHA means the Office of Hearings and Appeals within the Department.

OST means the Office of the Special Trustee for American Indians within the Department.

Per stirpes means by right of representation, dividing an estate into equal shares based on the number of decedent's surviving children and predeceased children who left issue who survive the decedent. The share of a predeceased child of the decedent is divided equally among the predeceased child's surviving children.

Probate means the legal process by which applicable tribal, Federal, or State law that affects the distribution of a decedent's estate is applied in order to:

(1) Determine the heirs;

(2) Determine the validity of wills and determine devisees;

(3) Determine whether claims against the estate will be paid from trust personalty; and

(4) Order the transfer of any trust or restricted land or trust personalty to the heirs, devisees, or other persons or entities entitled by law to receive them.

Purchase option at probate means the process by which eligible purchasers can purchase a decedent's interest during the probate proceeding.

Restricted property means real property whose title is held by an Indian but which cannot be alienated or encumbered without the consent of the Secretary. For the purposes of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term ''restricted property'' as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

Secretary means the Secretary of the Interior or an authorized representative.

Summary probate proceeding means the consideration of a probate file without a hearing. A summary probate proceeding may be conducted if the estate involves only an IIM account that does not exceed $5,000 in value on the date of the death of the decedent.

Superintendent means a BIA Superintendent or other BIA official,

including a field representative or one holding equivalent authority.

Testate means that the decedent executed a valid will as determined in the probate proceeding.

Testator means a person who has executed a valid will as determined in the probate proceeding.

Trust personalty means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

Trust property means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

We or *us* means the Secretary or an authorized representative as defined in this section.

Will means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

You or I means an interested party, as defined herein, with an interest in the decedent's trust estate unless a specific section states otherwise.

§ 30.102 Will the Secretary probate all the land or assets in an estate?

(a) We will probate only the trust or restricted land or trust personalty in an estate.

(b) We will not probate the following property:

(1) Real or personal property other than trust or restricted land or trust personalty in an estate of a decedent;

(2) Restricted land derived from allotments in the estates of members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests owned by Osage decedents.

(c) We will probate that part of the estate of a deceased member of the Five Civilized Tribes or Osage Nation who owned either:

(1) A trust interest in land; or

(2) A restricted interest in land derived from an individual Indian who was a member of a tribe other than the Five Civilized Tribes or Osage Nation.

Subpart B—Commencement of Probate Proceedings

§ 30.110 When does OHA commence a probate case?

OHA commences probate of a trust estate when OHA receives a probate file from the agency.

§ 30.111 How does OHA commence a probate case?

OHA commences a probate case by confirming the case number assigned by BIA, assigning the case to a judge or ADM, and designating the case as a summary probate proceeding or formal probate proceeding.

§ 30.112 What must a complete probate file contain?

A probate file must contain the documents and information described in 25 CFR 15.202 and any other relevant information.

§ 30.113 What will OHA do if it receives an incomplete probate file?

If OHA determines that the probate file received from the agency is incomplete or lacks the certification described in 25 CFR 15.204, OHA may do any of the following:

(a) Request the missing information from the agency;

(b) Dismiss the case and return the probate file to the agency for further processing;

(c) Issue a subpoena, interrogatories, or requests for production of documents as appropriate to obtain the missing information; or

(d) Proceed with a hearing in the case.

§ 30.114 Will I receive notice of the probate proceeding?

(a) If the case is designated as a formal probate proceeding, OHA will send a notice of hearing to:

(1) Potential heirs and devisees named in the probate file;

(2) Those creditors whose claims are included in the probate file; and

(3) Other interested parties identified by OHA.

(b) In a case designated a summary probate proceeding, OHA will send a notice of the designation to potential heirs and devisees and will inform them that a formal probate proceeding may be requested instead of the summary probate proceeding.

§ 30.115 May I review the probate record?

After OHA receives the case, you may examine the probate record at the relevant office during regular business hours and make copies at your own expense. Access to records in the probate file is governed by 25 U.S.C. 2216(e), the Privacy Act, and the Freedom of Information Act.

Subpart C—Judicial Authority and Duties

§ 30.120 What authority does the judge have in probate cases?

A judge who is assigned a probate case under this part has the authority to:

(a) Determine the manner, location, and time of any hearing conducted under this part, and otherwise to administer the cases;

(b) Determine whether an individual is deemed deceased by reason of extended unexplained absence or other pertinent circumstances;

(c) Determine the heirs of any Indian or eligible heir who dies intestate possessed of trust or restricted property;

(d) Approve or disapprove a will disposing of trust or restricted property;

(e) Accept or reject any full or partial renunciation of interest in either a testate or intestate proceeding;

(f) Approve or disapprove any consolidation agreement;

(g) Conduct sales at probate and provide for the distribution of interests in the probate decision and order;

(h) Allow or disallow claims by creditors;

(i) Order the distribution of trust property to heirs and devisees and determine and reserve the share to which any potential heir or devisee who is missing but not found to be deceased is entitled;

(j) Determine whether a tribe has jurisdiction over the trust or restricted property and, if so, the right of the tribe to receive a decedent's trust or restricted property under 25 U.S.C. 2206(a)(2)(B)(v), 2206(a)(2)(D)(iii)(IV), or other applicable law;

(k) Issue subpoenas for the appearance of persons, the testimony of witnesses, and the production of documents at hearings or depositions under 25 U.S.C. 374, on the judge's initiative or, within the judge's discretion, on the request of an interested party;

(l) Administer oaths and affirmations;

(m) Order the taking of depositions and determine the scope and use of deposition testimony;

(n) Order the production of documents and determine the scope and use of the documents;

(o) Rule on matters involving interrogatories and any other requests for discovery, including requests for admissions;

(p) Grant or deny stays, waivers, and extensions;

(q) Rule on motions, requests, and objections;

(r) Rule on the admissibility of evidence;

(s) Permit the cross-examination of witnesses;

(t) Appoint a guardian ad litem for any interested party who is a minor or found by the judge not to be competent to represent his or her own interests;

(u) Regulate the course of any hearing and the conduct of witnesses, interested

parties, attorneys, and attendees at a hearing;

(v) Determine and impose sanctions and penalties allowed by law; and

(w) Take any action necessary to preserve the trust assets of an estate.

§ 30.121 May a judge appoint a master in a probate case?

(a) In the exercise of any authority under this part, a judge may appoint a master to do all of the following:

(1) Conduct hearings on the record as to all or specific issues in probate cases as assigned by the judge;

(2) Make written reports including findings of fact and conclusions of law; and

(3) Propose a recommended decision to the judge.

(b) When the master files a report under this section, the master must also mail a copy of the report and recommended decision to all interested parties.

§ 30.122 Is the judge required to accept the master's recommended decision?

No, the judge is not required to accept the master's recommended decision.

(a) An interested party may file objections to the report and recommended decision within 30 days of the date of mailing. An objecting party must simultaneously mail or deliver copies of the objections to all other interested parties.

(b) Any other interested party may file responses to the objections within 15 days of the mailing or delivery of the objections. A responding party must simultaneously mail or deliver a copy of his or her responses to the objecting party.

(c) The judge will review the record of the proceedings heard by the master, including any objections and responses filed, and determine whether the master's report and recommended decision are supported by the evidence of record.

(1) If the judge finds that the report and recommended decision are supported by the evidence of record and are consistent with applicable law, the judge will enter an order adopting the recommended decision.

(2) If the judge finds that the report and recommended decision are not supported by the evidence of record, the judge may do any of the following:

(i) Remand the case to the master for further proceedings consistent with instructions in the remand order;

(ii) Make new findings of fact based on the evidence in the record, make conclusions of law, and enter a decision; or

(iii) Hear the case de novo, make findings of fact and conclusions of law, and enter a decision.

(3) The judge may find that the master's findings of fact are supported by the evidence in the record but the conclusions of law or the recommended decision is not consistent with applicable law. In this case, the judge will issue an order adopting the findings of fact, making conclusions of law, and entering a decision.

§ 30.123 Will the judge determine matters of status and nationality?

(a) The judge in a probate proceeding will determine:

(1) The status of eligible heirs or devisees as Indians;

(2) If relevant, the nationality or citizenship of eligible heirs or devisees; and

(3) Whether any of the Indian heirs or devisees with U.S. citizenship are individuals for whom the supervision and trusteeship of the United States has been terminated.

(b) A judge may make determinations under this section in a current probate proceeding or in a completed probate case after a reopening without regard to a time limit.

§ 30.124 When may a judge make a finding of death?

(a) A judge may make a finding that an heir, devisee, or person for whom a probate case has been opened is deceased, by reason of extended unexplained absence or other pertinent circumstances. The judge must include the date of death in the finding. The judge will make a finding of death only on:

(1) A determination from a court of competent jurisdiction; or

(2) Clear and convincing evidence.

(b) In any proceeding to determine whether a person is deceased, the following rebuttable presumptions apply:

(1) The absent person is presumed to be alive if credible evidence establishes that the absent person has had contact with any person or entity during the 6-year period preceding the hearing; and

(2) The absent person is presumed to be deceased if clear and convincing evidence establishes that no person or entity with whom the absent person previously had regular contact has had any contact with the absent person during the 6 years preceding the hearing.

§ 30.125 May a judge reopen a probate case to correct errors and omissions?

(a) On the written request of an interested party, or on the basis of the judge's own order, at any time, a judge has the authority to reopen a probate case to:

(1) Determine the correct identity of the original allottee, or any heir or devisee;

(2) Determine whether different persons received the same allotment;

(3) Decide whether trust patents covering allotments of land were issued incorrectly or to a non-existent person; or

(4) Determine whether more than one allotment of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) The judge will notify interested parties if a probate case is reopened and will conduct appropriate proceedings under this part.

§ 30.126 What happens if property was omitted from the inventory of the estate?

This section applies when, after issuance of a decision and order, it is found that trust or restricted property or an interest therein belonging to a decedent was not included in the inventory.

(a) A judge can issue an order modifying the inventory to include the omitted property for distribution under the original decision. The judge must furnish copies of any modification order to the agency and to all interested parties who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, the judge will:

(1) Conduct a hearing, if necessary, and issue a decision; and

(2) File a record of the proceeding with the designated LTRO.

(c) The judge's modification order or decision will become final at the end of the 30 days after the date on which it was mailed, unless a timely notice of appeal is filed with the Board within that period.

(d) Any interested party who is adversely affected by the judge's modification order or decision may appeal it to the Board within 30 days after the date on which it was mailed.

(e) The judge's modification order or decision must include a notice stating that interested parties who are adversely affected have a right to appeal the decision to the Board within 30 days after the decision is mailed, and giving the Board's address. The judge's modification order or decision will become final at the end of this 30-day period, unless a timely notice of appeal is filed with the Board.

§ 30.127 What happens if property was improperly included in the inventory?

(a) When, after a decision and order in a formal probate proceeding, it is found that property has been improperly included in the inventory of an estate, the inventory must be modified to eliminate this property. A petition for modification may be filed by the superintendent of the agency where the property is located, or by any interested party. The petitioner must serve the petition on all parties whose interests may be affected by the requested modification.

(b) A judge will review the merits of the petition and the record of the title from the LTRO on which the modification is to be based, enter an appropriate decision, and give notice of the decision as follows:

(1) If the decision is entered without a formal hearing, the judge must give notice of the decision to all interested parties whose rights are affected.

(2) If a formal hearing is held, the judge must:

(i) Enter a final decision based on his or her findings, modifying or refusing to modify the property inventory; and

(ii) Give notice of the decision to all interested parties whose rights are affected.

(c) Where appropriate, the judge may conduct a formal hearing at any stage of the modification proceeding. The hearing must be scheduled and conducted under this part.

(d) The judge's decision must include a notice stating that interested parties who are adversely affected have a right to appeal the decision to the Board within 30 days after the date on which the decision was mailed, and giving the Board's address. The judge's decision will become final at the end of this 30-day period, unless a timely notice of appeal is filed with the Board.

(e) The judge must forward the record of all proceedings under this section to the designated LTRO.

§ 30.128 What happens if an error in BIA's estate inventory is alleged?

This section applies when, during a probate proceeding, an interested party alleges that the estate inventory prepared by BIA is inaccurate and should be corrected.

(a) Alleged inaccuracies may include, but are not limited to, the following:

(1) Trust property interests should be removed from the inventory because the decedent executed a gift deed or gift deed application during the decedent's lifetime, and BIA had not, as of the time of death, determined whether to approve the gift deed or gift deed application;

(2) Trust property interests should be removed from the inventory because a deed through which the decedent acquired the property is invalid;

(3) Trust property interests should be added to the inventory; and

(4) Trust property interests included in the inventory are improperly described, although an erroneous recitation of acreage alone is not considered an improper description.

(b) When an error in the estate inventory is alleged, the OHA deciding official will refer the matter to BIA for resolution under 25 CFR parts 150, 151, or 152 and the appeal procedures at 25 CFR part 2.

(1) If BIA makes a final determination resolving the inventory challenge before the judge issues a final decision in the probate proceeding, the probate decision will reflect the inventory determination.

(2) If BIA does not make a final determination resolving the inventory challenge before the judge issues a final decision in the probate proceeding, the final probate decision will:

(i) Include a reference to the pending inventory challenge; and

(ii) Note that the probate decision is subject to administrative modification once the inventory dispute has been resolved.

Subpart D—Recusal of a Judge or ADM

§ 30.130 How does a judge or ADM recuse himself or herself from a probate case?

If a judge or ADM must recuse himself or herself from a probate case under § 4.27(c) of this title, the judge or ADM must immediately file a certificate of recusal in the file of the case and notify the Chief ALJ, all interested parties, any counsel in the case, and the affected BIA agencies. The judge or ADM is not required to state the reason for recusal.

§ 30.131 How will the case proceed after the judge's or ADM's recusal?

Within 30 days of the filing of the certificate of recusal, the Chief ALJ will appoint another judge or ADM to hear the case, and will notify the parties identified in § 30.130 of the appointment.

§ 30.132 May I appeal the judge's or ADM's recusal decision?

(a) If you have filed a motion seeking disqualification of a judge or ADM under § 4.27(c)(2) of this title and the judge or ADM denies the motion, you may seek immediate review of the denial by filing a request with the Chief ALJ under § 4.27(c)(3) of this title.

(b) If a judge or ADM recuses himself from a probate case, you may not seek review of the recusal.

Subpart E—Claims

§ 30.140 Where and when may I file a claim against the probate estate?

You may file a claim against the trust estate of an Indian with BIA or, after the agency transfers the probate file to OHA, with OHA.

(a) In a formal probate proceeding, you must file your claim before the conclusion of the first hearing. Claims that are not filed by the conclusion of the first hearing are barred.

(b) In a summary probate proceeding, if you are a devisee or eligible heir, you must file your claim with OHA within 30 days after the mailing of the notice of summary probate proceeding. Claims of creditors who are not devisees or eligible heirs will not be considered in a summary probate proceeding unless they were filed with the agency before it transferred the probate file to OHA.

§ 30.141 How must I file a claim against a probate estate?

You must file your claim under 25 CFR 15.302 through 15.305.

§ 30.142 Will a judge authorize payment of a claim from the trust estate if the decedent's non-trust estate was or is available?

The judge will not authorize payment of a claim from trust or restricted property if the judge determines that the decedent's non-trust estate was or is available to pay the claim. This provision does not apply to a claim that is secured by trust or restricted property.

§ 30.143 Are there any categories of claims that will not be allowed?

(a) Claims for care will not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(b) A claim will not be allowed if it:

(1) Has existed for such a period as to be barred by the applicable statute of limitations at date of decedent's death;

(2) Is a tort claim that has not been reduced to judgment in a court of competent jurisdiction;

(3) Is unliquidated; or

(4) Is from a government entity and relates to payments for:

(i) General assistance, welfare, unemployment compensation or similar benefits; or

(ii) Social Security Administration supplemental security income or old-age, disability, or survivor benefits.

§ 30.144 May the judge authorize payment of the costs of administering the estate?

On motion of the superintendent or an interested party, the judge may authorize payment of the costs of administering the estate as they arise and before the allowance of any claims against the estate.

§ 30.145 When can a judge reduce or disallow a claim?

The judge has discretion to decide whether part or all of an otherwise valid claim is unreasonable, and if so, to reduce the claim to a reasonable amount or disallow the claim in its entirety. If a claim is reduced, the judge will order payment only of the reduced amount.

§ 30.146 What property is subject to claims?

Except as prohibited by law, all intangible trust personalty of a decedent on hand or accrued at the date of death may be used for the payment of claims, including:

(a) IIM account balances;

(b) Bonds;

(c) Unpaid judgments; and

(d) Accounts receivable.

§ 30.147 What happens if there is not enough trust personalty to pay all the claims?

If, as of the date of death, there was not enough trust personalty to pay all allowed claims, the judge may order them paid on a pro rata basis. The unpaid balance of any claims will not be enforceable against the estate after the estate is closed.

§ 30.148 Will interest or penalties charged after the date of death be paid?

Interest or penalties charged against claims after the date of death will not be paid.

Subpart F—Consolidation and Settlement Agreements

§ 30.150 What action will the judge take if the interested parties agree to settle matters among themselves?

(a) A judge may approve a settlement agreement among interested parties resolving any issue in the probate proceeding if the judge finds that:

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

(2) All parties to the agreement understand the effect of the agreement on their rights; and

(3) It is in the best interest of the parties to settle.

(b) In considering the proposed settlement agreement, the judge may consider evidence of the respective values of specific items of property and all encumbrances.

(c) If the judge approves the settlement agreement under paragraph (a) of this section, the judge will issue an order approving the settlement agreement and distributing the estate in accordance with the agreement.

§ 30.151 May the devisees or eligible heirs in a probate proceeding consolidate their interests?

The devisees or eligible heirs may consolidate interests under 25 U.S.C. 2206(e) in trust property already owned by the heirs or under 25 U.S.C. 2206(j)(9) in property from the inventory of the decedent's estate, or both.

(a) A judge may approve a written agreement among devisees or eligible heirs in a probate case to consolidate the interests of a decedent's devisees or eligible heirs.

(1) To accomplish a consolidation, the agreement may include conveyances among decedent's devisees or eligible heirs of:

(i) Interests in trust or restricted land in the decedent's trust inventory; and

(ii) Interests of the devisees or eligible heirs in trust or restricted land which are not part of the decedent's trust inventory.

(2) The parties must offer evidence sufficient to satisfy the judge of the percentage of ownership held and offered by a party.

(3) If the decedent's devisees or eligible heirs enter into an agreement, the parties to the agreement are not required to comply with the Secretary's rules and requirements otherwise applicable to conveyances by deed.

(b) If the judge approves an agreement, the judge will issue an order distributing the estate in accordance with the agreement.

(c) In order to approve an agreement, the judge must find that:

(1) The agreement to consolidate is voluntary;

(2) All parties to the agreement know the material facts;

(3) All parties to the agreement understand the effect of the agreement on their rights; and

(4) The agreement accomplishes consolidation.

(d) An interest included in an approved agreement may not be purchased at probate without consent of the owner of the consolidated interest.

§ 30.152 May the parties to an agreement waive valuation of trust property?

The parties to a settlement agreement or a consolidation agreement may waive valuation of trust property otherwise required by regulation or the Secretary's rules and requirements. If the parties waive valuation, the waiver must be included in the written agreement.

§ 30.153 Is an order approving an agreement considered a partition or sale transaction?

An order issued by a judge approving a consolidation or settlement agreement will not be considered a partition or sale transaction under 25 CFR part 152.

Subpart G—Purchase at Probate

§ 30.160 What may be purchased at probate?

An eligible purchaser may purchase, during the probate of a trust or restricted estate, all or part of the estate of a person who died on or after June 20, 2006.

(a) Any interest in trust or restricted property, including a life estate that is part of the estate (i.e., a life estate owned by the decedent but measured by the life of someone who survives the decedent), may be purchased at probate with the following exceptions:

(1) If an interest is included in an approved consolidation agreement, that interest may not be purchased at probate without consent of the owner of the consolidated interest; and

(2) An interest that a devisee will receive under a valid will cannot be purchased without the consent of the devisee.

(b) A purchase option must be exercised before a decision or order is entered and must be included as part of the order in the estate.

§ 30.161 Who may purchase at probate?

An eligible purchaser is any of the following:

(a) Any devisee or eligible heir who is taking an interest in the same parcel of land in the probate proceeding;

(b) Any person who owns an undivided trust or restricted interest in the same parcel of land;

(c) The Indian tribe with jurisdiction over the parcel containing the interest; or

(d) The Secretary on behalf of the tribe.

§ 30.162 Does property purchased at probate remain in trust or restricted status?

Yes. The property interests purchased at probate must remain in trust or restricted status.

§ 30.163 Is consent required for a purchase at probate?

(a) Consent is required for a purchase at probate if both of the following conditions are met:

(1) If the interest in trust or restricted property meets the criteria in § 30.160(a)(1) or (2); and

(2) If the interest an heir will receive by intestate succession in the parcel subject to the probate proceeding meets either of the following criteria:

(i) It is 5 percent or more of the entire undivided ownership interest in the parcel; or

(ii) It is less than 5 percent of the entire undivided ownership interest in the parcel and the heir was residing on the parcel on the date of the decedent's death.

(b) A devisee's consent is always required for a purchase at probate.

§ 30.164 What must I do to purchase at probate?

Any eligible purchaser must submit a written request to OHA to purchase at probate before the decision or order is issued.

§ 30.165 Who will OHA notify of a request to purchase at probate?

OHA will provide notice of a request to purchase at probate as shown in the following table:

OHA will provide notice to . . .	By . . .
(a) The heirs or devisees and the Indian tribe with jurisdiction over the interest.	First class mail.
(b) The BIA agency with jurisdiction over the interest	First class mail.
(c) All parties who have submitted a written request for purchase	First class mail.
(d) To all other eligible purchasers	Posting written notice in: (1) At least five conspicuous places in the vicinity of the place of the hearing; and (2) One conspicuous place at the agency with jurisdiction over the parcel.

§ 30.166 What will the notice of the request to purchase at probate include?

The notice under § 30.165 will include:

(a) The type of sale;

(b) The date, time, and place of the sale;

(c) A description of the interest to be sold; and

(d) The appraised market value, determined in accordance with § 30.167(b), of the parcel containing the interest to be sold, a description of the interest to be sold, and an estimate of the market value allocated to the interest being sold.

§ 30.167 How does OHA decide whether to approve a purchase at probate?

(a) OHA will approve a purchase at probate if an eligible purchaser submits a bid in an amount equal to or greater than the market value of the interest. OHA will sell the interest to the eligible purchaser submitting the highest such bid.

(b) The market value of the interest to be sold at probate must be based on an appraisal that meets the standards in the Uniform Standards for Professional Appraisal Practice (USPAP), or on a valuation method developed by the Secretary pursuant to 25 U.S.C. 2214.

§ 30.168 How will the judge allocate the proceeds from a sale?

(a) The judge will allocate the proceeds of sale among the heirs based on the fractional ownership interests in the parcel.

(b) For the sale of an interest subject to a life estate, the judge must use the ratios in 25 CFR part 179 to allocate the proceeds of the sale among the holder of the life estate and the holders of any remainder interests.

§ 30.169 What may I do if I do not agree with the appraised market value?

(a) If you are the heir whose interest is to be sold or a potential purchaser and you disagree with the appraised market value, you may:

(1) File a written objection with OHA within 30 days after the date on which the notice provided under § 30.165 was mailed, stating the reasons for the objection; and

(2) Submit any supporting documentation showing why the market value should be modified within 15 days after filing a written objection.

(b) The judge will consider your objection, make a determination of the market value, determine whether to approve the purchase under § 30.167, and notify all interested parties. The determination must include a notice stating that interested parties who are adversely affected may file written objections and request an interlocutory appeal to the Board as provided in § 30.170.

§ 30.170 What may I do if I disagree with the judge's determination to approve a purchase at probate?

(a) If you are adversely affected by the judge's determination to approve a purchase at probate under § 30.167(a), you may file a written objection with the judge within 15 days after the mailing of a determination under § 30.169(b).

(1) The written objection must state the reasons for the objection and request an interlocutory appeal of the determination to the Board.

(2) You must serve a copy of the written objection on the other interested parties and the agencies, stating that you have done so in your written objection.

(b) If the objection is timely filed, the judge must forward a certified copy of the complete record in the case to the Board, together with a table of contents for the record, for review of the determination. The judge will not issue the decision in the probate case until the Board has issued its decision on interlocutory review of the determination.

(c) If the objection is not timely filed, the judge will issue an order denying the request for review as untimely and will furnish copies of the order to the interested parties and the agencies. If you disagree with the decision of the judge as to whether your objection was timely filed, you may file a petition for rehearing under § 30.237 after the judge issues a decision under § 30.235.

§ 30.171 What happens when the judge grants a request to purchase at probate?

When the judge grants a request to purchase at probate, the judge will:

(a) Notify all bidders by first class mail; and

(b) Notify OST, the agency that prepared the probate file, and the agency having jurisdiction over the interest sold, including the following information:

(1) The estate involved;

(2) The parcel and interest sold;

(3) The identity of the successful bidder; and

(4) The amount of the bid.

§ 30.172 When must the successful bidder pay for the interest purchased?

The successful bidder must pay to OST, by cashier's check or money order via the lockbox, or by electronic funds transfer, the full amount of the purchase price within 30 days after the mailing of the notice of successful bid.

§ 30.173 What happens after the successful bidder submits payment?

(a) When OST receives payment, it will notify OHA, and the judge will enter an order approving the sale and directing the LTRO to record the transfer of title of the interest to the successful bidder. The order will state the date of the title transfer, which is the date payment was received.

(b) OST will deposit the payment in the decedent's estate account.

§ 30.174 What happens if the successful bidder does not pay within 30 days?

(a) If the successful bidder fails to pay the full amount of the bid within 30 days, the sale will be canceled and the interest in the trust or restricted property will be distributed as determined by the judge.

(b) The time for payment may not be extended.

(c) Any partial payment received from the successful bidder will be returned.

§ 30.175 When does a purchased interest vest in the purchaser?

An interest in trust or restricted property purchased under this subpart is considered to have vested in the purchaser on the date specified in § 30.173(a).

Subpart H—Renunciation of Interest

§ 30.180 May I give up an inherited interest in trust or restricted property or trust personalty?

You may renounce an inherited or devised interest in trust or restricted property, including a life estate, or in trust personalty if you are 18 years old and not under a legal disability.

§ 30.181 How do I renounce an inherited interest?

To renounce an interest under § 30.180, you must file with the judge, before the issuance of the final order in the probate case, a signed and acknowledged declaration specifying the interest renounced.

(a) In your declaration, you may retain a life estate in a specified interest in trust or restricted land and renounce the remainder interest, or you may renounce the complete interest.

(b) If you renounce an interest in trust or restricted land, you may either:

(1) Designate an eligible person or entity meeting the requirements of § 30.182 or § 30.183 as the recipient; or

(2) Renounce without making a designation.

(c) If you choose to renounce your interests in favor of a designated recipient, the judge must notify the designated recipient.

§ 30.182 Who may receive a renounced interest in trust or restricted land?

(a) If the interest renounced is an interest in land, you may renounce only in favor of:

(1) An eligible heir of the decedent;

(2) A person eligible to be a devisee of the interest, if you are a devisee of the interest under a valid will; or

(3) The tribe with jurisdiction over the interest.

(b) For purposes of paragraph (a)(2) of this section, a person eligible to be a devisee of the interest is:

(1) A lineal descendant of the testator;

(2) A person who owns a preexisting undivided trust or restricted interest in the same parcel;

(3) Any Indian; or

(4) The tribe with jurisdiction over the interest.

§ 30.183 Who may receive a renounced interest of less than 5 percent in trust or restricted land?

You may renounce an interest in trust or restricted land that is not disposed of by a valid will and that represents less than 5 percent of the entire undivided ownership of a parcel of land only in favor of:

(a) One other eligible heir;

(b) One Indian who is related to you by blood;

(c) One co-owner of another trust or restricted interest in the same parcel; or

(d) The Indian tribe with jurisdiction over the interest.

§ 30.184 Who may receive a renounced interest in trust personalty?

(a) You may renounce an interest in trust personalty in favor of any person or entity.

(b) The Secretary will maintain and continue to manage trust personalty transferred by renunciation to:

(1) A lineal descendant of the testator;

(2) A tribe; or

(3) Any Indian.

(c) The Secretary will directly disburse and distribute trust personalty transferred by renunciation to a person or entity other than those listed in paragraph (b) of this section.

§ 30.185 May my designated recipient refuse to accept the interest?

Yes. Your designated recipient may refuse to accept the interest, in which case the renounced interest passes to the devisees or heirs of the decedent as if you had predeceased the decedent. The refusal must be made in writing and filed with the judge before the judge issues the final order in the probate case.

§ 30.186 Are renunciations that predate the American Indian Probate Reform Act of 2004 valid?

Any renunciation filed and included as part of a probate decision or order issued before the effective date of the American Indian Probate Reform Act of 2004 remains valid.

§ 30.187 May I revoke my renunciation?

A written renunciation is irrevocable after the judge enters the final order in the probate proceeding. A revocation will not be effective unless the judge actually receives it before entry of a final order.

§ 30.188 Does a renounced interest vest in the person who renounced it?

No. An interest in trust or restricted property renounced under § 30.181 is not considered to have vested in the renouncing heir or devisee, and the renunciation is not considered a transfer by gift of the property renounced.

(a) If the renunciation directs the interest to an eligible person or entity, the interest passes directly to that person or entity.

(b) If the renunciation does not direct the interest to an eligible person or entity, the renounced interest passes to the heirs of the decedent as if the person renouncing the interest had predeceased the decedent, or if there are no other heirs, to the residuary devisees.

Subpart I—Summary Probate Proceedings

§ 30.200 What is a summary probate proceeding?

(a) A summary probate proceeding is the disposition of a probate case without a formal hearing on the basis of the probate file received from the agency. A summary probate proceeding may be conducted by a judge or an ADM, as determined by the supervising judge.

(b) A decedent's estate may be processed summarily if the estate involves only cash and the total value of the estate does not exceed $5,000 on the date of death.

§ 30.201 What does a notice of a summary probate proceeding contain?

The notice of summary probate proceeding under § 30.114(b) will contain the following:

(a) Notice of the right of any interested party to request that OHA handle the probate case as a formal probate proceeding;

(b) A summary of the proposed distribution of the decedent's estate, a statement of the IIM account balance, and a copy of the death certificate;

(c) A notice that the only claims that will be considered are those from

eligible heirs or devisees, or from any person or entity who filed a claim with BIA before the transfer of the probate file to OHA, with a copy of any such claim;

(d) A notice that an interested party may renounce or disclaim an interest, in writing, either generally or in favor of a designated person or entity; and

(e) Any other information that OHA determines to be relevant.

§ 30.202 May I file a claim or renounce or disclaim an interest in the estate in a summary probate proceeding?

(a) Claims that have been filed with the agency before the probate file is transferred to OHA will be considered in a summary probate proceeding.

(b) If you are a devisee or eligible heir, you may also file a claim with OHA as a creditor within 30 days after the mailing of the notice of the summary probate proceeding.

(c) You may renounce or disclaim an interest in the estate within 30 days after the mailing of the notice of the summary probate.

§ 30.203 May I request that a formal probate proceeding be conducted instead of a summary probate proceeding?

Yes. Interested parties who are devisees or eligible heirs have 30 days after the mailing of the notice to file a written request for a formal probate hearing.

§ 30.204 What must a summary probate decision contain?

The written decision in a summary probate proceeding must be in the form of findings of fact and conclusions of law, with a proposed decision and order for distribution. The judge or ADM must mail or deliver a notice of the decision, together with a copy of the decision, to each affected agency and to each interested party. The decision must satisfy the requirements of this section.

(a) Each decision must contain one of the following:

(1) If the decedent did not leave heirs or devisees a statement to that effect; or

(2) If the decedent left heirs or devisees:

(i) The names of each heir or devisee and their relationships to the decedent;

(ii) The distribution of shares to each heir or devisee; and

(iii) The names of the recipients of renounced or disclaimed interests.

(b) Each decision must contain all of the following:

(1) Citations to the law of descent and distribution under which the decision is made;

(2) A statement allowing or disallowing claims against the estate under this part, and an order directing the amount of payment for all approved claims;

(3) A statement approving or disapproving any renunciation;

(4) A statement advising all interested parties that they have a right to seek de novo review under § 30.205, and that, if they fail to do so, the decision will become final 30 days after it is mailed; and

(5) A statement of whether the heirs or devisees are:

(i) Indian;

(ii) Non-Indian but eligible to hold property in trust status; or

(iii) Non-Indian and ineligible to hold property in trust status.

(c) In a testate case only, the decision must contain a statement that:

(1) Approves or disapproves a will;

(2) Interprets provisions of the approved will; and

(3) Describes the share each devisee is to receive, subject to any encumbrances.

§ 30.205 How do I seek review of a summary probate proceeding?

(a) If you are adversely affected by the written decision in a summary probate proceeding, you may seek de novo review of the case. To do this, you must file a request with the OHA office that issued the decision within 30 days after the date the decision was mailed.

(b) The request for de novo review must be in writing and signed, and must contain the following information:

(1) The name of the decedent;

(2) A description of your relationship to the decedent;

(3) An explanation of what errors you allege were made in the summary probate decision; and

(4) An explanation of how you are adversely affected by the decision.

§ 30.206 What happens after I file a request for de novo review?

(a) Within 10 days of receiving a request for de novo review, OHA will notify the agency that prepared the probate file, all other affected agencies, and all interested parties of the de novo review, and assign the case to a judge.

(b) The judge will review the merits of the case, conduct a hearing as necessary or appropriate under the regulations in this part, and issue a new decision under this part.

§ 30.207 What happens if nobody files for de novo review?

If no interested party requests de novo review within 30 days of the date of the written decision, it will be final for the Department. OHA will send:

(a) The complete original record and the final order to the agency that prepared the probate file; and

(b) A copy of any relevant portions of the record to any other affected agency.

Subpart J—Formal Probate Proceedings

Notice

§ 30.210 How will I receive notice of the formal probate proceeding?

OHA will provide notice of the formal probate proceeding under § 30.114(a) by mail and by posting. A posted and published notice may contain notices for more than one hearing, and need only specify the names of the decedents, the captions of the cases and the dates, times, places, and purposes of the hearings.

(a) The notice must:

(1) Be sent by first class mail;

(2) Be sent and posted at least 21 days before the date of the hearing; and

(3) Include a certificate of mailing with the date of mailing, signed by the person mailing the notice.

(b) A presumption of actual notice exists with respect to any person to whom OHA sent a notice under paragraph (a) of this section, unless the notice is returned by the Postal Service as undeliverable to the addressee.

(c) OHA must post the notice in each of the following locations:

(1) Five or more conspicuous places in the vicinity of the designated place of hearing; and

(2) The agency with jurisdiction over each parcel of trust or restricted property in the estate.

(d) OHA may also post the notice in other places and on other reservations as the judge deems appropriate.

§ 30.211 Will the notice be published in a newspaper?

The judge may cause advance notice of hearing to be published in a newspaper of general circulation in the vicinity of the designated place of hearing. The cost of publication may be paid from the assets of the estate under § 30.144.

§ 30.212 May I waive notice of the hearing or the form of notice?

You may waive your right to notice of the hearing and the form of notice by:

(a) Appearing at the hearing and participating in the hearing without objection; or

(b) Filing a written waiver with the judge before the hearing.

§ 30.213 What notice to a tribe is required in a formal probate proceeding?

(a) In probate cases in which the decedent died on or after June 20, 2006, the judge must notify any tribe with jurisdiction over the trust or restricted land in the estate of the pendency of a proceeding.

(b) A certificate of mailing of a notice of probate hearing to the tribe at its

record address will be conclusive evidence that the tribe had notice of the decedent's death, of the probate proceedings, and of the right to purchase.

§ 30.214 What must a notice of hearing contain?

The notice of hearing under § 30.114(a) must:

(a) State the name of the decedent and caption of the case;

(b) Specify the date, time, and place that the judge will hold a hearing to determine the heirs of the decedent and, if a will is offered for probate, to determine the validity of the will;

(c) Name all potential heirs of the decedent known to OHA, and, if a will is offered for probate, the devisees under the will and the attesting witnesses to the will;

(d) Cite this part as the authority and jurisdiction for holding the hearing;

(e) Advise all persons who claim to have an interest in the estate of the decedent, including persons having claims against the estate, to be present at the hearing to preserve the right to present evidence at the hearing;

(f) Include notice of the opportunity to consolidate interests at the probate hearing, including that the heirs or devisees may propose additional interests for consolidation, and include notice of the opportunity for renunciation either generally or in favor of a designated recipient;

(g) In estates for decedents whose date of death is on or after June 20, 2006, include notice of the possibilities of purchase and sale of trust or restricted property by heirs, devisees, co-owners, a tribe, or the Secretary; and

(h) State that the hearing may be continued to another time and place.

Depositions, Discovery, and Prehearing Conference

§ 30.215 How may I obtain documents related to the probate proceeding?

(a) You may make a written demand to produce documents for inspection and copying. This demand:

(1) May be made at any stage of the proceeding before the conclusion of the hearing;

(2) May be made on any other party to the proceeding or on a custodian of records concerning interested parties or their trust property;

(3) Must be made in writing, and a copy must be filed with the judge; and

(4) May demand copies of any documents, photographs, or other tangible things that are relevant to the issues, not privileged, and in another party's or custodian's possession, custody, or control.

(b) Custodians of official records will furnish and reproduce documents, or permit their reproduction, under the rules governing the custody and control of the records.

(1) Subject to any law to the contrary, documents may be made available to any member of the public upon payment of the cost of producing the documents, as determined reasonable by the custodians of the records.

(2) Information within federal records will be maintained and disclosed as provided in 25 U.S.C. 2216(e), the Privacy Act, and the Freedom of Information Act.

§ 30.216 How do I obtain permission to take depositions?

(a) You may take the sworn testimony of any person by deposition on oral examination for the purpose of discovery or for use as evidence at a hearing:

(1) On stipulation of the parties; or

(2) By order of the judge.

(b) To obtain an order from the judge for the taking of a deposition, you must file a motion that sets forth:

(1) The name and address of the proposed witness;

(2) The reasons why the deposition should be taken;

(3) The name and address of the person qualified under § 30.217(a) to take depositions; and

(4) The proposed time and place of the examination, which must be at least 20 days after the date of the filing of the motion.

(c) An order for the taking of a deposition must be served upon all interested parties and must state:

(1) The name of the witness;

(2) The time and place of the examination, which must be at least 15 days after the date of the order; and

(3) The name and address of the officer before whom the examination is to be made.

(d) The officer and the time and place specified in paragraphs (c)(2) and (c)(3) of this section need not be the same as those requested in the motion under paragraph (b) of this section.

(e) You may request that the judge issue a subpoena for the witness to be deposed under § 30.224.

§ 30.217 How is a deposition taken?

(a) The witness to be deposed must appear before the judge or before an officer authorized to administer oaths by the laws of the United States or by the laws of the place of the examination, as specified in:

(1) The judge's order under § 30.216(c); or

(2) The stipulation of the parties under § 30.216(a)(1).

(b) The witness must be examined under oath or affirmation and subject to cross-examination. The witness's testimony must be recorded by the officer or someone in the officer's presence.

(c) When the testimony is fully transcribed, it must be submitted to the witness for examination and must be read to or by him or her, unless examination and reading are waived.

(1) Any changes in form or substance that the witness desires to make must be entered on the transcript by the officer, with a statement of the reasons given by the witness for making them.

(2) The transcript must then be signed by the witness, unless the interested parties by stipulation waive the signing, or the witness is unavailable or refuses to sign.

(3) If the transcript is not signed by the witness, the officer must sign it and state on the record the fact of the waiver, the unavailability of the witness, or the refusal to sign together with the reason given, if any. The transcript may then be used as if it were signed, unless the judge determines that the reason given for refusal to sign requires rejection of the transcript in whole or in part.

(d) The officer must certify on the transcript that the witness was duly sworn by the officer and that the transcript is a true record of the witness's testimony. The officer must then hand deliver or mail the original and two copies of the transcript to the judge.

§ 30.218 How may the transcript of a deposition be used?

A transcript of a deposition taken under this part may be offered by any party or the judge in a hearing if the judge finds that the evidence is otherwise admissible and if either:

(a) The witness is unavailable; or

(b) The interest of fairness is served by allowing the transcript to be used.

§ 30.219 Who pays for the costs of taking a deposition?

The party who requests the taking of a deposition must make arrangements for payment of any costs incurred. The judge may assign the costs in the order.

§ 30.220 How do I obtain written interrogatories and admission of facts and documents?

(a) You may serve on any other interested party written interrogatories and requests for admission of facts and documents if:

(1) The interrogatories and requests are served in sufficient time to permit answers to be filed before the hearing,

or as otherwise ordered by the judge; and

(2) Copies of the interrogatories and requests are filed with the judge.

(b) A party receiving interrogatories or requests served under paragraph (a) of this section must:

(1) Serve answers upon the requesting party within 30 days after the date of service of the interrogatories or requests, or within another deadline agreed to by the parties or prescribed by the judge; and

(2) File a copy of the answers with the judge.

§ 30.221 May the judge limit the time, place, and scope of discovery?

Yes. The judge may limit the time, place, and scope of discovery either:

(a) On timely motion by any interested party, if that party also gives notice to all interested parties and shows good cause; or

(b) When the judge determines that limits are necessary to prevent delay of the proceeding or prevent undue hardship to a party or witness.

§ 30.222 What happens if a party fails to comply with discovery?

(a) If a party fails to respond to a request for admission, the facts for which admission was requested will be deemed to be admitted, unless the judge finds good cause for the failure to respond.

(b) If a party fails without good cause to comply with any other discovery under this part or any order issued, the judge may:

(1) Draw inferences with respect to the discovery request adverse to the claims of the party who has failed to comply with discovery or the order, or

(2) Make any other ruling that the judge determines just and proper.

(c) Failure to comply with discovery includes failure to:

(1) Produce a document as requested;

(2) Appear for examination;

(3) Respond to interrogatories; or

(4) Comply with an order of the judge.

§ 30.223 What is a prehearing conference?

Before a hearing, the judge may order the parties to appear for a conference to:

(a) Simplify or clarify the issues;

(b) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(c) Limit the number of expert or other witnesses to avoid excessively cumulative evidence;

(d) Facilitate agreements disposing of all or any of the issues in dispute; or

(e) Resolve such other matters as may simplify and shorten the hearing.

Hearings

§ 30.224 May a judge compel a witness to appear and testify at a hearing or deposition?

(a) The judge can issue a subpoena for a witness to appear and testify at a hearing or deposition and to bring documents or other material to the hearing or deposition.

(1) You may request that the judge issue a subpoena for the appearance of a witness to testify. The request must state the name, address, and telephone number or other means of contacting the witness, and the reason for the request. The request must be timely. The requesting party must mail the request to all other interested parties and to the witness at the time of filing.

(2) The request must specify the documents or other material sought for production under the subpoena.

(3) The judge will grant or deny the request in writing and mail copies of the order to all the interested parties and the witness.

(4) A person subpoenaed may seek to avoid a subpoena by filing a motion to quash with the judge and sending copies to the interested parties.

(b) Anyone whose legal residence is more than 100 miles from the hearing location may ask the judge to excuse his or her attendance under subpoena. The judge will inform the interested parties in writing of the request and the judge's decision on the request in writing in a timely manner.

(c) A witness who is subpoenaed to a hearing under this section is entitled to the fees and allowances provided by law for a witness in the courts of the United States (see 28 U.S.C. 1821).

(d) If a subpoenaed person fails or refuses to appear at a hearing or to testify, the judge may file a petition in United States District Court for issuance of an order requiring the subpoenaed person to appear and testify.

§ 30.225 Must testimony in a probate proceeding be under oath or affirmation?

Yes. Testimony in a probate proceeding must be under oath or affirmation.

§ 30.226 Is a record made of formal probate hearings?

(a) The judge must make a verbatim recording of all formal probate hearings. The judge will order the transcription of recordings of hearings as the judge determines necessary.

(b) If the judge orders the transcription of a hearing, the judge will make the transcript available to interested parties on request.

§ 30.227 What evidence is admissible at a probate hearing?

(a) A judge conducting probate proceedings under this part may admit any written, oral, documentary, or demonstrative evidence that is:

(1) Relevant, reliable, and probative;

(2) Not privileged under Federal law; and

(3) Not unduly repetitious or cumulative.

(b) The judge may exclude evidence if its probative value is substantially outweighed by the risk of undue confusion of the issues or delay.

(c) Hearsay evidence is admissible. The judge may consider the fact that evidence is hearsay when determining its probative value.

(d) A judge may admit a copy of a document into evidence or may require the admission of the original document. After examining the original document, the judge may substitute a copy of the original document and return the original.

(e) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the judge and the parties in interpreting and applying the provisions of this section.

(f) The judge may take official notice of any public record of the Department and of any matter of which federal courts may take judicial notice.

(g) The judge will determine the weight given to any evidence admitted.

(h) Any party objecting to the admission or exclusion of evidence must concisely state the grounds. A ruling on every objection must appear in the record.

(i) There is no privilege under this part for any communication that:

(1) Occurred between a decedent and any attorney advising a decedent; and

(2) Pertained to a matter relevant to an issue between parties, all of whom claim through the decedent.

§ 30.228 Is testimony required for self-proved wills, codicils, or revocations?

The judge may approve a self-proved will, codicil, or revocation, if uncontested, and order distribution, with or without the testimony of any attesting witness.

§ 30.229 When will testimony be required for approval of a will, codicil, or revocation?

(a) The judge will require testimony if someone contests the approval of a self-proved will, codicil, or revocation, or submits a non-self-proved will for approval. In any of these cases, the attesting witnesses who are in the reasonable vicinity of the place of hearing must appear and be examined, unless they are unable to appear and

testify because of physical or mental infirmity.

(b) If an attesting witness is not in the reasonable vicinity of the place of hearing or is unable to appear and testify because of physical or mental infirmity, the judge may:

(1) Order the deposition of the attesting witness at a location reasonably near the residence of the witness;

(2) Admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will; and

(3) As evidence of the execution, admit proof of the handwriting of the testator and of the attesting witnesses, or of any of them.

§ 30.230 Who pays witnesses' costs?

Interested parties who desire a witness to testify at a hearing must make their own financial and other arrangements for the witness.

§ 30.231 May a judge schedule a supplemental hearing?

Yes. A judge may schedule a supplemental hearing if he or she deems it necessary.

§ 30.232 What will the official record of the probate case contain?

The official record of the probate case will contain:

(a) A copy of the posted public notice of hearing showing the posting certifications;

(b) A copy of each notice served on interested parties with proof of mailing;

(c) The record of the evidence received at the hearing, including any transcript made of the testimony;

(d) Claims filed against the estate;

(e) Any wills, codicils, and revocations;

(f) Inventories and valuations of the estate;

(g) Pleadings and briefs filed;

(h) Interlocutory orders;

(i) Copies of all proposed or accepted settlement agreements, consolidation agreements, and renunciations and acceptances of renounced property;

(j) In the case of sale of estate property at probate, copies of notices of sale, appraisals and objections to appraisals, requests for purchases, all bids received, and proof of payment;

(k) The decision, order, and the notices thereof; and

(l) Any other documents or items deemed material by the judge.

§ 30.233 What will the judge do with the original record?

(a) The judge must send the original record to the designated LTRO under 25 CFR part 150.

(b) The judge must also send a copy of:

(1) The order to the agency originating the probate, and

(2) The order and inventory to other affected agencies.

§ 30.234 What happens if a hearing transcript has not been prepared?

When a hearing transcript has not been prepared:

(a) The recording of the hearing must be retained in the office of the judge issuing the decision until the time allowed for rehearing or appeal has expired; and

(b) The original record returned to the LTRO must contain a statement indicating that no transcript was prepared.

Decisions in Formal Proceedings

§ 30.235 What will the judge's decision in a formal probate proceeding contain?

The judge must decide the issues of fact and law involved in any proceeding and issue a written decision that meets the requirements of this section.

(a) In all cases, the judge's decision must:

(1) Include the name, birth date, and relationship to the decedent of each heir or devisee;

(2) State whether the heir or devisee is Indian or non-Indian;

(3) State whether the heir or devisee is eligible to hold property in trust status;

(4) Provide information necessary to identify the persons or entities and property interests involved in any settlement or consolidation agreement, renunciations of interest, and purchases at probate;

(5) Approve or disapprove any renunciation, settlement agreement, consolidation agreement, or purchase at probate;

(6) Allow or disallow claims against the estate under this part, and order the amount of payment for all approved claims;

(7) Include the probate case number that has been assigned to the case in any case management or tracking system then in use within the Department;

(8) Make any other findings of fact and conclusions of law necessary to decide the issues in the case; and

(9) Include the signature of the judge and date of the decision.

(b) In a case involving a will, the decision must include the information in paragraph (a) of this section and must also:

(1) Approve or disapprove the will;

(2) Interpret provisions of an approved will as necessary; and

(3) Describe the share each devisee is to receive under an approved will, subject to any encumbrances.

(c) In all intestate cases, including a case in which a will is not approved, and any case in which an approved will does not dispose of all of the decedent's trust or restricted property, the decision will include the information in paragraph (a) of this section and must also:

(1) Cite the law of descent and distribution under which the decision is made; and

(2) Describe the distribution of shares to which the heirs are entitled; and

(3) Include a determination of any rights of dower, curtesy, or homestead that may constitute a burden upon the interest of the heirs.

§ 30.236 What notice of the decision will the judge provide?

When the judge issues a decision, the judge must mail or deliver a notice of the decision, together with a copy of the decision, to each affected agency and to each interested party. The notice must include a statement that interested parties who are adversely affected have a right to file a petition for rehearing with the judge within 30 days after the date on which notice of the decision was mailed. The decision will become final at the end of this 30-day period, unless a timely petition for rehearing is filed with the judge.

§ 30.237 May I file a petition for rehearing if I disagree with the judge's decision in the formal probate hearing?

(a) If you are adversely affected by the decision, you may file with the judge a written petition for rehearing within 30 days after the date on which the decision was mailed under § 30.236.

(b) If the petition is based on newly discovered evidence, it must:

(1) Be accompanied by one or more affidavits of witnesses stating fully the content of the new evidence; and

(2) State the reasons for the failure to discover and present that evidence at the hearings held before the issuance of the decision.

(c) A petition for rehearing must state specifically and concisely the grounds on which it is based.

(d) The judge must forward a copy of the petition for rehearing to the affected agencies.

§ 30.238 Does any distribution of the estate occur while a petition for rehearing is pending?

The agencies must not initiate payment of claims or distribute any portion of the estate while the petition is pending, unless otherwise directed by the judge.

§ 30.239 How will the judge decide a petition for rehearing?

(a) If proper grounds are not shown, or if the petition is not timely filed, the judge will:

(1) Issue an order denying the petition for rehearing and including the reasons for denial; and

(2) Furnish copies of the order to the petitioner, the agencies, and the interested parties.

(b) If the petition appears to show merit, the judge must:

(1) Cause copies of the petition and supporting papers to be served on all persons whose interest in the estate might be adversely affected if the petition is granted;

(2) Allow all persons served a reasonable, specified time in which to submit answers or legal briefs in response to the petition; and

(3) Consider, with or without a hearing, the issues raised in the petition.

(c) The judge may affirm, modify, or vacate the former decision.

(d) On entry of a final order, the judge must distribute the order as provided in this part. The order must include a notice stating that interested parties who are adversely affected have a right to appeal the final order to the Board, within 30 days of the date on which the order was mailed, and giving the Board's address.

§ 30.240 May I submit another petition for rehearing?

No. Successive petitions for rehearing are not permitted. The jurisdiction of the judge terminates when he or she issues a decision finally disposing of a petition for rehearing, except for:

(a) The issuance of necessary orders nunc pro tunc to correct clerical errors in the decision; and

(b) The reopening of a case under this part.

§ 30.241 When does the judge's decision on a petition for rehearing become final?

The decision on a petition for rehearing will become final on the expiration of the 30 days allowed for the filing of a notice of appeal, as provided in this part and § 4.320 of this chapter.

§ 30.242 May a closed probate case be reopened?

(a) The judge may reopen a closed probate case as shown in the following table.

How the case can be reopened	Applicable deadline	Standard for reopening the case
(1) On the judge's own motion.	(i) Initiated within 3 years after the date of the original decision.	To correct an error of fact or law in the original decision.
	(ii) Initiated more than 3 years after the date of the original decision.	To correct an error of fact or law in the original decision which, if not corrected, would result in a manifest injustice.
(2) On a petition filed by the agency.	(i) Filed within 3 years after the date of the original decision.	To correct an error of fact or law in the original decision.
	(ii) Filed more than 3 years after the date of the original decision.	To correct an error of fact or law in the original decision which, if not corrected, would result in a manifest injustice.
(2) On a petition filed by the interested party.	(i) Filed within 3 years after the date of the original decision and within 1 year after the petitioner's discovery of an alleged error.	To correct an error of fact or law in the original decision.
	(ii) Filed more than 3 years after the date of the original decision and within 1 year after the petitioner's discovery of an alleged error.	To correct an error of act or law in the original decision which, if not corrected, would result in a manifest injustice.

(b) All grounds for reopening must be set forth fully in the petition.

(c) A petition filed by an interested party must:

(1) Include all relevant evidence, in the form of documents or affidavits, concerning when the petitioner discovered the alleged error; and

(2) If the grounds for reopening are based on alleged errors of fact, be supported by affidavit.

§ 30.243 How will the judge decide my petition for reopening?

(a) If the judge finds that proper grounds are not shown, the judge will issue an order denying the petition for reopening and giving the reasons for the denial. An order denying reopening must include a notice stating that interested parties who are adversely affected have a right to appeal the order to the Board within 30 days of the date on which the order was mailed, and giving the Board's address. Copies of the judge's decision must be mailed to the petitioner, the agencies, and those persons whose rights would be affected.

(b) If the petition appears to show merit, the judge must cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest in the estate might be affected if the petition is granted. They may respond to the petition by filing answers, cross-petitions, or briefs. The filings must be made within the time periods set by the judge.

§ 30.244 What happens if the judge reopens the case?

On reopening, the judge may affirm, modify, or vacate the former decision.

(a) The final order on reopening must include a notice stating that interested parties who are adversely affected have a right to appeal the final order to the Board within 30 days of the date on which the order was mailed, and giving the Board's address.

(b) Copies of the judge's decision on reopening must be mailed to the petitioner and to all persons who received copies of the petition.

(c) By order directed to the agency, the judge may suspend further distribution of the estate or income during the reopening proceedings.

(d) The judge must file the record made on a reopening petition with the designated LTRO and must furnish a duplicate record to the affected agencies.

§ 30.245 When will the decision on reopening become final?

The decision on reopening will become final on the expiration of the 30 days allowed for the filing of a notice of appeal, as provided in this part.

Subpart K—Miscellaneous Provisions

§ 30.250 When does the anti-lapse provision apply?

(a) The following table illustrates how the anti-lapse provision applies.

If . . .	And . . .	Then . . .
A testator devises trust property to any of his or her grandparents or to the lineal descendant of a grandparent.	The devisee dies before the testator, leaving lineal descendants.	The lineal descendants take the right, title, or interest given by the will per stirpes.

(b) For purposes of this section, relationship by adoption is equivalent to relationship by blood.

§ 30.251 What happens if an heir or devisee participates in the killing of the decedent?

Any person who knowingly participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent may not take, directly or indirectly, any inheritance or devise under the decedent's will. This person will be treated as if he or she had predeceased the decedent.

§ 30.252 May a judge allow fees for attorneys representing interested parties?

(a) Except for attorneys representing creditors, the judge may allow fees for attorneys representing interested parties.

(1) At the discretion of the judge, these fees may be charged against the interests of the party represented or as a cost of administration.

(2) Petitions for allowance of fees must be filed before the close of the last hearing.

(b) Nothing in this section prevents an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing attorney fees is subject to a petition for rehearing and to an appeal.

§ 30.253 How must minors or other legal incompetents be represented?

Minors and other legal incompetents who are interested parties must be represented by legally appointed guardians, or by guardians ad litem appointed by the judge. In appropriate cases, the judge may order the payment of fees to the guardian ad litem from the assets of the estate.

§ 30.254 What happens when a person dies without a valid will and has no heirs?

The judge will determine whether a person with trust or restricted property died intestate and without heirs, and the judge will determine whether 25 U.S.C. 2206(a) applies, as shown in the following table.

If . . .	Then . . .	Or . . .
(a) 25 U.S.C. 2206(a) applies.	The judge will order distribution of the property under § 2206(a)(2)(B)(v) through (a)(2)(C).	The judge will order distribution of the property under § 2206(a)(2)(D)(iii)(IV) through (V).
(b) 25 U.S.C. 2206(a) does not apply.	If the trust or restricted property is not on the public domain, the judge will order the escheat of the property under 25 U.S.C. 373a.	If the trust or restricted property is on the public domain, the judge will order the escheat of the property under 25 U.S.C. 373b.

Subpart L—Tribal Purchase of Interests Under Special Statutes

§ 30.260 What land is subject to a tribal purchase option at probate?

Sections 30.260 through 30.274 apply to formal Indian probate proceedings that relate to the tribal purchase of a decedent's interests in trust and restricted land under the statutes shown in the following table.

Location of trust or restricted land	Statutes governing purchase
(a) Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951).	The Act of December 31, 1970 (Pub. L. 91–627; 84 Stat. 1874; 25 U.S.C. 607 (1976)), amending section 7 of the Act of August 9, 1946 (60 Stat. 968).
(b) Warm Springs Reservation or within the area ceded by the Treaty of June 25, 1855 (12 Stat. 37).	The Act of August 10, 1972 (Pub. L. 92–377; 86 Stat. 530).
(c) Nez Perce Indian Reservation or within the area ceded by the Treaty of June 11, 1855 (12 Stat. 957).	The Act of September 29, 1972 (Pub. L. 92–443; 86 Stat. 744).

§ 30.261 How does a tribe exercise its statutory option to purchase?

(a) To exercise its option to purchase, the tribe must file with the agency:

(1) A written notice of purchase; and

(2) A certification that the tribe has mailed copies of the notice on the same date to the judge and to the affected heirs or devisees.

(b) A tribe may purchase all or part of the available interests specified in the probate decision. A tribe may not, however, claim an interest less than decedent's total interest in any one individual tract.

§ 30.262 When may a tribe exercise its statutory option to purchase?

(a) A tribe may exercise its statutory option to purchase:

(1) Within 60 days after mailing of the probate decision unless a petition for rehearing has been filed under § 30.237 or a demand for hearing has been filed under § 30.268; or

(2) If a petition for rehearing or a demand for hearing has been filed, within 20 days after the date of the decision on rehearing or hearing, whichever is applicable, provided the decision on rehearing or hearing is favorable to the tribe.

(b) On failure to timely file a notice of purchase, the right to distribution of all unclaimed interests will accrue to the heirs or devisees.

§ 30.263 May a surviving spouse reserve a life estate when a tribe exercises its statutory option to purchase?

Yes. When the heir or devisee whose interests are subject to the tribal purchase option is a surviving spouse, the spouse may reserve a life estate in one-half of the interests.

(a) To reserve a life estate, the spouse must, within 30 days after the tribe has exercised its option to purchase the interest, file with the agency both:

(1) A written notice to reserve a life estate; and

(2) A certification that copies of the notice have been mailed on the same date to the judge and the tribe.

(b) Failure to file the notice on time, as required by paragraph (a)(1) of this section, constitutes a waiver of the option to reserve a life estate.

§ 30.264 When must BIA furnish a valuation of a decedent's interests?

(a) BIA must furnish a valuation report of the decedent's interests when the record reveals to the agency:

(1) That the decedent owned interests in land located on one or more of the reservations designated in § 30.260; and

(2) That one or more of the probable heirs or devisees who may receive the interests either:

(i) Is not enrolled in the tribe of the reservation where the land is located; or

(ii) Does not have the required blood quantum in the tribe to hold the interests against a claim made by the tribe.

(b) When required by paragraph (a) of this section, BIA must furnish a valuation report in the probate file when it is submitted to OHA. Interested parties may examine and copy, at their expense, the valuation report at the agency.

(c) The valuation must be made on the basis of the fair market value of the property, as of the date of decedent's death.

(d) If there is a surviving spouse whose interests may be subject to the tribal purchase option, the valuation must include the value of a life estate based on the life of the surviving spouse in one-half of such interests.

§ 30.265 What determinations will a judge make with respect to a tribal purchase option?

(a) If a tribe files a written notice of purchase under § 30.261(a), a judge will determine:

(1) The entitlement of a tribe to purchase a decedent's interests in trust or restricted land under the applicable statute;

(2) The entitlement of a surviving spouse to reserve a life estate in one-half of the surviving spouse's interests that have been purchased by a tribe; and

(3) The fair market value of such interests, as determined by an appraisal or other valuation method developed by the Secretary under 25 U.S.C. 2214, including the value of any life estate reserved by a surviving spouse.

(b) In making a determination under paragraph (a)(1) of this section, the following issues will be determined by the official tribal roll, which is binding on the judge:

(1) Enrollment or refusal of the tribe to enroll a specific individual; and

(2) Specification of blood quantum, where pertinent.

(c) For good cause shown, the judge may stay the probate proceeding to permit an interested party who is adversely affected to pursue an enrollment application, grievance, or appeal through the established procedures applicable to the tribe.

§ 30.266 When is a final decision issued?

This section applies when a decedent is shown to have owned land interests in any one or more of the reservations designated in § 30.260.

(a) The probate proceeding relative to the determination of heirs, approval or disapproval of a will, and the claims of creditors must first be concluded as final for the Department under this part. This decision is referred to in this section as the ''probate decision.''

(b) At the formal probate hearing, a finding must be made on the record showing those interests in land, if any, that are subject to the tribal purchase option.

(1) The finding must be included in the probate decision and must state:

(i) The apparent rights of the tribe as against affected heirs or devisees; and

(ii) The right of a surviving spouse whose interests are subject to the tribal purchase option to reserve a life estate in one-half of the interests.

(2) If the finding is that there are no interests subject to the tribal purchase option, the decision must so state.

(3) A copy of the probate decision, together with a copy of the valuation report, must be distributed to all interested parties under § 30.236.

§ 30.267 What if I disagree with the probate decision regarding tribal purchase option?

If you are an interested party who is adversely affected by the probate decision, you may, within 30 days after the date on which the probate decision was mailed, file with the judge a written petition for rehearing under this part.

§ 30.268 May I demand a hearing regarding the tribal purchase option decision?

Yes. You may file with the judge a written demand for hearing if you are an interested party who is adversely affected by the exercise of the tribal purchase option or by the valuation of the interests in the valuation report.

(a) The demand for hearing must be filed by whichever of the following deadlines is applicable:

(1) Within 30 days after the date of the probate decision;

(2) Within 30 days after the date of the decision on rehearing; or

(3) Within 20 days after the date on which the tribe exercises its option to purchase available interests.

(b) The demand for hearing must:

(1) Include a certification that copies of the demand have been mailed on the same date to the agency and to each interested party; and

(2) State specifically and concisely the grounds on which it is based.

§ 30.269 What notice of the hearing will the judge provide?

On receiving a demand for hearing, the judge must:

(a) Set a time and place for the hearing after expiration of the 30-day period fixed for the filing of the demand for hearing as provided in § 30.268; and

(b) Mail a notice of the hearing to all interested parties not less than 20 days in advance of the hearing.

§ 30.270 How will the hearing be conducted?

(a) At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests in the valuation report will have the burden of proving his or her position.

(b) On conclusion of the hearing, the judge will issue a decision that determines all of the issues including, but not limited to:

(1) The fair market value of the interests purchased by the tribe; and

(2) Any adjustment to the fair market value made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests.

(c) The decision must include a notice stating that interested parties who are adversely affected have a right to appeal the decision to the Board within 30 days after the date on which the decision was mailed, and giving the Board's address.

(d) The judge must:

(1) Forward the complete record relating to the demand for hearing to the LTRO as provided in § 30.233;

(2) Furnish a duplicate record thereof to the agency; and

(3) Mail a notice of such action together with a copy of the decision to each interested party.

§ 30.271 How must the tribe pay for the interests it purchases?

(a) A tribe must pay the full fair market value of the interests purchased, as set forth in the appraisal or other valuation report, or as determined after hearing under § 30.268, whichever is applicable.

(b) Payment must be made within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever is later.

§ 30.272 What are BIA's duties on payment by the tribe?

On payment by the tribe of the interests purchased, the Superintendent must:

(a) Issue a certificate to the judge that payment has been made; and

(b) File with the certificate all supporting documents required by the judge.

§ 30.273 What action will the judge take to record title?

After receiving the certificate and supporting documents, the judge will:

(a) Issue an order that the United States holds title to the interests in trust for the tribe;

(b) File the complete record, including the decision, with the LTRO as provided in § 30.233;

(c) Furnish a duplicate copy of the record to the agency; and

(d) Mail a notice of the action together with a copy of the decision to each interested party.

§ 30.274 What happens to income from land interests during pendency of the probate?

During the pendency of the probate, there may be income received or accrued from the land interests purchased by the tribe, including the payment from the tribe. This income will be credited to the estate and paid to the heirs. For purposes of this section, pendency of the probate ends on the date of transfer of title to the United States in trust for the tribe under § 30.273.

Dated: October 2, 2008.

James E. Cason,

Associate Deputy Secretary, Department of the Interior.

[FR Doc. E8–26487 Filed 11–12–08; 8:45 am]

BILLING CODE 4310–W7–P