(3) Time certificates of deposit and commercial paper provided that the commercial paper has a rating of either ''A1'' or ''P1'' or both.

(b) No more than two percent of the total principal amount outstanding of fixed income obligations of a single issuer may be held by the Fund at any one time, *Provided*, however, That this restriction shall not apply to obligations of the United States or any of its agencies.

§ 29.12 Borrowing.

In the event the Fund is unable to satisfy a claim determined to be justified, or is in need of money with which to initiate the operation of the Fund, the Fund may borrow the money needed from any commercial credit source at the lowest available rate of interest. If the amount to be borrowed is $500,000 or less, the Administrator may arrange to pledge the credit of the Fund pursuant to a resolution of the Board of Trustees. If the proposed borrowing exceeds $500,000, the Administrator shall, prior to issuance of a note or other security pledging the credit of the Fund, secure the approval of the Secretary. No money may be borrowed from any of the Permittees or their affiliates.

§ 29.13 Termination.

Upon termination of operations of the Pipeline, the full disposition of all claims, and the expiration of time for the filing of claims against the Fund, all assets remaining in the Fund shall be placed in a temporary trust fund account within the State of Alaska. The terms of the trust arrangement shall be determined by the Secretary. During the next succeeding session of Congress, the Secretary shall request that Congress provide for final disposition of the Fund. If Congress at any time establishes a comprehensive oil pollution liability fund which supersedes or repeals the Fund, the Fund assets and any pending claims shall be disposed of as Congress or the Secretary shall direct.

§ 29.14 Information collection.

The information collection requirements contained in 43 CFR 29.9 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned approval No. 1084–0026. The information being collected is the information required to substantiate claims submitted to the Fund. The information will be used to determine whether the claims are appropriate for payment by the Fund. Submission of this information is required of claimants before a claim can be considered.

PART 30—INDIAN PROBATE HEARINGS PROCEDURES

Subpart A—Scope of Part; Definitions

Subpart B—Commencement of Probate Proceedings

Subpart C—Judicial Authority and Duties

Subpart D—Recusal of a Judge or ADM

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.

SOURCE: 73 FR 67289, Nov. 13, 2008, unless otherwise noted.

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 30.253.
(6) Probate of estates of Indians who die possessed of trust or restricted property.	All sections except §§ 30.260 through 30.274.
(7) Purchases at probate	§§ 30.400 through 30.424.
(8) Renunciation of interests	§§ 30.180 through 30.192.
(9) Summary probate proceedings	§§ 30.200 through 30.209.
(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) §§ 30.400 through 30.424 (purchases at probate);

(3) §§ 30.183 through 30.189, except for §§ 30.186(a), (b)(2), and (c) and 30.187.

(4) § 30.213; and

(5) § 30.214(f) and (g).

[73 FR 67289, Nov. 13, 2008, as amended at 76 FR 7506, Feb. 10, 2011; 86 FR 72083, Dec. 20, 2021; 88 FR 39769, June 20, 2023]

§ 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 summary probate proceedings.

BIA means the Bureau of Indian Affairs 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.

Co-owner means any person who owns an undivided trust or restricted interest in the same parcel in which the decedent owns an interest.

Covered permanent improvement means a permanent improvement (including an interest in such an improvement) that is:

(1) Owned by the decedent at the time of death; and

(2) Attached to a parcel of trust or restricted land that is also, in whole or in part, owned by the decedent at the time of death.

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 means a written document issued by a judge in a formal probate proceeding or by a judge or ADM in a summary probate proceeding making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personalty.

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.

Distribution order means the OHA order distributing additional property that has been added to an estate under § 30.251.

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.

Home agency means the agency that serves the Tribe in which the decedent is a member or where the decedent's IIM account originated.

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, to whom the Secretary has delegated the authority to hear and decide Indian probate cases, pursuant to 25 U.S.C. 372–2.

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.

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.

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.

Joint tenancy means ownership by two or more persons of the same property, where the individuals, who are called joint tenants, share equal, undivided ownership of the property and have a right of survivorship such that upon the death of a joint tenant, the property descends to the other joint tenants by operation of law.

Judge means an ALJ or IPJ.

Lineal descendant means a blood relative of a person in that person's direct line of descent.

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.

Order means any written direction or determination, other than a decision, issued by a judge in a probate case, including a distribution order, an order on rehearing, an order on reopening, or a reconsideration order.

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.

Petition to Complete Purchase at Probate means a petition BIA files with an appraisal or valuation to request that OHA complete the purchase at probate process.

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 did not exceed $300 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.

Tenants in common means two or more people who share ownership rights in a property, but whose ownership rights are divisible from each other and, when a tenant in common dies, the property descends to that tenant's heirs or devisees rather than to the other tenant or tenants.

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 estate unless a specific section states otherwise.

[73 FR 67289, Nov. 13, 2008, as amended at 76 FR 7506, Feb. 10, 2011; 86 FR 72083, Dec. 20, 2021; 88 FR 39769, June 20, 2023]

§ 30.102 What assets will the Secretary probate?

(a) We will probate only the trust or restricted land or trust personalty owned by the decedent at the time of death.

(b) We will not probate the following property:

(1) Real or personal property other than trust or restricted land or trust personalty owned by the decedent at the time of death;

(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 lands and assets owned by a deceased member of the Five Civilized Tribes or Osage Nation who owned either 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 the Osage Nation.

[76 FR 7506, Feb. 10, 2011]

Subpart B—Commencement of Probate Proceedings

§ 30.110 When does OHA commence a probate case?

OHA commences probate of an estate when OHA receives a probate file from the agency.

[76 FR 7506, Feb. 10, 2011]

§ 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?

If the case is designated as a formal probate proceeding, OHA will send a notice of hearing to:

(a) Potential heirs and devisees named in the probate file;

(b) Those creditors whose claims are included in the probate file; and

(c) Other interested parties identified by OHA

[86 FR 72083, Dec. 20, 2021]

§ 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) If relevant, 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.

[73 FR 67289, Nov. 13, 2008, as amended at 86 FR 72084, Dec. 20, 2021]

§ 30.124 When may a judge presume the death of an heir, devisee, or person for whom a probate case has been opened?

(a) When a person cannot be proven dead but evidence of death is needed, a judge may presume that an heir, devisee, or person for whom a probate case has been opened has died at a certain time if any of the following evidence is submitted:

(1) A certified copy of an official report or finding by an agency or department of the United States, State, or Tribe that a missing person is dead or presumed to be dead. The judge will use the date of death found by the agency or department, if such a finding was made. If no such finding was made, unless other evidence is submitted showing an actual date of death, the judge will use the date on which the person was reported missing as the date of death.

(2) A certified copy of an order from a court of competent jurisdiction that a missing person is dead or presumed to be dead. The judge will use the date of death found by the court, if such a finding was made. If no such finding was made, unless other evidence is submitted showing an actual date of death, the judge will use the date on which the person was reported missing as the date of death.

(3) Signed affidavits or sworn testimony by those in a position to know that facts and other records show that the person has been absent from his or her residence for no apparent reason, or has no identifiable place of residence and cannot be located, and has not been heard from for at least 6 years. If there is no evidence available that the person continued to live after the date of disappearance or the date of last contact if the person has no identifiable place of residence, the judge will use the date the person disappeared or the date of last contact as the date of death.

(4) When a person has been missing for less than 6 years but may be presumed dead due to an identified incident, such as drowning, fire, or accident, signed affidavits or sworn testimony from individuals who know the circumstances surrounding the occurrence leading to the person's disappearance. The best evidence is statements from individuals who witnessed the occurrence or saw the missing person at the scene of the occurrence shortly before it happened. If there is no evidence available that the person continued to live after the date of the identified incident, the judge will use the date of the identified incident as the date of death.

(5) When a person cannot be located by BIA or known surviving family members and was born at least 100 years before the submission of a probate case to OHA, certification from BIA or signed affidavits or sworn testimony by those in a position to know the approximate date of birth. If there is no evidence available that the person continued to live after reaching the age of 100, the judge will use the date that is 100 years after the date of birth as the date of death.

(b) A presumption of death made based on paragraph (a) of this section can be rebutted by evidence that establishes that the person is still alive or explains the individual's absence in a manner consistent with continued life rather than death.

[86 FR 72084, Dec. 20, 2021]

§ 30.125 May a judge order that a property interest be partitioned as a result of a devise?

(a) A judge may order a property interest to be partitioned if:

(1) A will attempts to divide an allotment into two or more distinct portions and devises at least one of those portions;

(2) The decedent was the sole owner of the allotment;

(3) The allotment is held entirely in trust or restricted status; and

(4) The devise describes the portions of the allotment in a manner that allows the judge to readily ascertain which portion of the allotment descends to each intended devisee.

(b) If the requirements of paragraph (a) of this section are not met, the judge may find that a devise of a portion of an undivided allotment fails.

[86 FR 72084, Dec. 20, 2021]

§§ 30.126—30.127 [Reserved]

§ 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 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 should be removed from the inventory because a deed through which the decedent acquired the property is invalid;

(3) Trust property should be added to the inventory; and

(4) Trust property included in the inventory is described improperly, 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.

[73 FR 67289, Nov. 13, 2008, as amended at 76 FR 7506, Feb. 10, 2011]

§ 30.129 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.

[73 FR 67289, Nov. 13, 2008. Redesignated at 86 FR 72084, Dec. 20, 2021]

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 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.

[73 FR 67289, Nov. 13, 2008, as amended at 76 FR 7507, Feb. 10, 2011]

§ 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 estate if the decedent's non-trust property was or is available?

The judge will not authorize payment of a claim from the estate if the judge determines that the decedent's non-trust property was or is available to pay the claim. This provision does not apply to a claim that is secured by trust or restricted property.

[76 FR 7507, Feb. 10, 2011]

§ 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 the 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.

[73 FR 67289, Nov. 13, 2008, as amended at 76 FR 7507, Feb. 10, 2011]

§ 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 in trust property already owned by the devisees or heirs or 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;

(ii) Interests of the devisees or eligible heirs in trust or restricted land which are not part of the decedent's trust inventory; and

(iii) Interests of the decedent, the devisees, or eligible heirs in any covered permanent improvements attached to a parcel of trust or restricted land in 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.

[73 FR 67289, Nov. 13, 2008, as amended at 76 FR 7507, Feb. 10, 2011]

§ 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 [Reserved]

Subpart H—Renunciation of Interest

SOURCE: 86 FR 72084, Dec. 20, 2021, unless otherwise noted.

§ 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:

(a) You are 18 years or older and not under a legal disability; or

(b) You are an entity.

§ 30.181 When may I renounce a devised or inherited interest?

(a) If the judge has not yet issued a decision, you may renounce a devised or inherited interest at any time before the issuance of the decision.

(b) If the judge has issued a decision, you may renounce a devised or inherited interest in any property distributed by the decision:

(1) Within 30 days from the mailing date of the decision; or

(2) Within 30 days of the order on review, in a summary probate proceeding in which a request for review has been filed; or

(3) Before the entry of an order on rehearing, in a formal probate proceeding in which a petition for rehearing is pending.

(c) You may renounce a devised or inherited interest that is added to the decedent's estate after the decision is issued pursuant to § 30.251 within 30 days of mailing the distribution order.

(d) Once the order on rehearing is issued, you may not renounce a devised or inherited interest that was distributed by the decision.

§ 30.182 Who may renounce an inherited interest on behalf of an heir or devisee who dies before the hearing?

If an individual heir or devisee dies before the hearing, a renunciation may be made on his or her behalf by any of the following, if the judge makes a determination that the renunciation is in the best interest of the parties:

(a) An individual appointed by a probate court to act on behalf of his or her private (*i.e.,* non-Federal-trust) estate, including but not limited to a personal representative, administrator, or executor; or

(b) Someone appointed by the judge with the express approval of all the heirs or devisees of the deceased heir or devisee.

§ 30.183 Who may receive a renounced interest in trust or restricted land if the land will descend pursuant to a valid will?

A devisee may renounce an interest in trust or restricted land in favor of any one or more of the following:

(a) A lineal descendant of the testator;

(b) A co-owner;

(c) The Tribe with jurisdiction over the interest; or

(d) Any Indian.

§ 30.184 Who may receive a renounced interest in trust or restricted land if the land will descend by intestate succession?

(a) If the interest in trust or restricted land represents 5 percent or more of the entire undivided ownership

of the parcel, you may renounce that interest in favor of one or more of the following:

(1) Eligible heirs of the decedent; or

(2) The Tribe with jurisdiction over the interest.

(b) If the interest in the trust or restricted land represents less than 5 percent of the entire undivided ownership of the parcel, you may renounce that interest in favor of only one person or entity listed in paragraph (a) of this section, or to one Indian person related to you by blood.

§ 30.185 Who may receive a renounced interest in trust personalty?

You may renounce an interest in trust personalty in favor of any person or entity.

§ 30.186 How do I renounce an inherited interest?

To renounce an interest under § 30.180, you must file with the judge a written declaration or Tribal resolution specifying the interest to be renounced. The declaration must be signed by you and acknowledged before a notary or judge. The Tribal resolution must be approved by appropriate Tribal authorities.

(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 § 30.183 or § 30.184 as the recipient; or

(2) Renounce without making a designation.

(c) If a distribution order to add property to the decedent's estate is issued, you may renounce an inherited interest in the property to be added by notifying the judge in writing of your intent to renounce the interest within 30 days of the mailing date of the distribution order.

[86 FR 72084, Dec. 20, 2021, as amended at 88 FR 39769, June 20, 2023]

§ 30.187 What happens if I do not designate any eligible individual or entity to receive the renounced interest?

If you do not designate any individual or entity to receive the renounced interest, or if you designate an individual or entity who is not eligible to receive the renounced interest, the interest will descend to the decedent's heirs or devisees as if you predeceased the decedent.

§ 30.188 What steps will the judge take if I designate a recipient?

If you choose to renounce your interests in favor of a designated recipient, the judge will determine whether the designated recipient is eligible to receive the interest. If the designated recipient is eligible, the judge must notify the designated recipient of the renunciation.

§ 30.189 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 will descend to the devisees or heirs of the decedent as if you had predeceased the decedent. When the judge notifies the designated recipient of the renunciation, the judge will specify a deadline for the recipient to file a written refusal to accept the interest. If no written refusal is received before the deadline, the interest will descend to the designated recipient.

§ 30.190 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 October 27, 2004, the effective date of the American Indian Probate Reform Act of 2004, remains valid.

§ 30.191 May I revoke my renunciation?

A written renunciation is irrevocable when the applicable order distributing the renounced property becomes final.

§ 30.192 Does a renounced interest vest in the person who renounced it?

No. An interest in trust or restricted property renounced under this subpart

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.

Subpart I—Summary Probate Proceedings

SOURCE: 86 FR 72085, Dec. 20, 2021, unless otherwise noted.

§ 30.200 What is a summary probate proceeding?

(a) A summary probate proceeding is the disposition of a probate case without a formal hearing, which is conducted on the basis of the probate file received from the agency. A summary probate proceeding may be conducted by a judge or an ADM.

(b) A decedent's estate may be processed summarily if the estate involves only funds in an IIM account and the total value of the estate does not exceed $300 on the decedent's date of death, including:

(1) Funds deposited into the IIM account on or before the date of death; and

(2) Funds accrued on or before the date of death.

§ 30.201 May I file a claim in a summary probate proceeding?

No. Claims may not be filed in summary probate proceedings.

§ 30.202 What will happen when OHA receives the summary probate file?

When OHA receives a summary probate file from BIA under 25 CFR 15.202(b), OHA will determine the distribution of the estate based on the information included in the probate file and issue a summary probate decision directing distribution of the estate.

§ 30.203 What will happen if the funds in the estate are insufficient to provide each heir or devisee at least one cent?

If the funds in the estate are insufficient to provide each of the heirs or devisees at least one cent, all of the funds will be paid to the oldest heir or devisee, whichever is applicable.

§ 30.204 May I request that a formal probate proceeding be conducted instead of a summary probate proceeding?

No. Formal probate proceedings are available only for estates that contain trust or restricted land or contain trust personalty in an amount greater than $300.

§ 30.205 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 an order for distribution. Each decision must include the following:

(a) The name, birth date, and relationship to the decedent of each heir or devisee;

(b) A statement as to whether the heir or devisee is eligible to hold property in trust status and, if relevant, a statement of whether the heir or devisee is ''Indian'' for purposes of the Act;

(c) If the case involves a will, a statement approving or disapproving the will, interpreting provisions of an approved will as necessary, and describing the share each devisee is to receive under an approved will;

(d) In intestate cases, citation to the law of descent and distribution under which the summary probate decision is made, and description of the share each heir is to receive;

(e) A statement advising all interested parties, other than potential claimants, that they have a right to seek review under § 30.207 and that, if they fail to do so, the summary probate decision will become final 30 days after it is mailed;

(f) Notice to the heirs or devisees that each may renounce his or her right to inherit the funds in favor of one or more individuals or entities. The heir or devisee will be ordered to submit the renunciation within 30 days of the mailing date of the decision or within 30 days of an order on review if a request for review is filed by any party;

(g) A statement that the findings in a summary probate decision may not be used to determine the decedent's heirs or devisees for distribution of any trust or restricted land that may be added to

the decedent's estate at a later time. If BIA identifies trust or restricted land in the decedent's estate after the completion of the summary probate process, BIA should file a petition for reopening and include all documents required for a formal probate proceeding pursuant to 25 CFR 15.202(a); and

(h) The signature of the judge or ADM and date of the probate decision.

§ 30.206 What notice of the summary probate decision will the judge or ADM provide?

When the judge or ADM issues a decision in a summary probate proceeding, 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.

(a) The notice must include a statement that interested parties who are adversely affected have a right to file a request for review with the judge or ADM within 30 days of the mailing date of the decision.

(b) The decision will become final at the end of the 30-day period, unless a timely request is filed.

§ 30.207 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 review of the summary probate decision. To do this, you must file a request with the OHA office that issued the summary probate decision within 30 days after the date the summary probate decision was mailed. BIA may also seek review within the same deadline.

(b) The request for 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.

§ 30.208 What happens after I file a request for review?

(a) Within 30 days of receiving a request for review, OHA will notify the agency that prepared the probate file, all other affected agencies, and all interested parties of the request.

(b) A judge will review the merits of the case, consider any allegations of errors in the summary probate decision, conduct a hearing if necessary or appropriate to address the issues raised in the request, and issue an order affirming, modifying, or vacating the summary probate decision.

(c) The judge must distribute the final order on the request to review to each affected agency and to each interested party. The order must include a notice stating that interested parties who are adversely affected, or BIA, have a right to appeal the final order to the Board within 30 days of the date on which the final order was mailed, and giving the Board's address.

§ 30.209 What will the judge or ADM do with the official record of the summary probate case?

The judge or ADM will transfer the official record of the summary probate case to the agency originating the probate, by sending all original hard copies, and transmitting all digital files, that are designated by OHA as part of the official record, including:

(a) The decision, order, and the notices thereof;

(b) A copy of the notice of hearing on review with proof of mailing, if applicable;

(c) The record of the evidence received at the hearing on review, if a hearing was held, including any transcript made of the testimony;

(d) Any wills, codicils and revocations;

(e) Any pleadings and briefs filed;

(f) Interlocutory orders;

(g) Copies of all proposed or accepted settlement agreements, consolidation agreements, and renunciations and acceptances of renunciations; and

(h) Any other documents deemed material by the judge.

Subpart J—Formal Probate Proceedings

NOTICE

§ 30.210 How will I receive personal notice of the formal probate proceeding?

(a) You will receive personal notice of the formal probate proceeding hearing described in § 30.114 by first class mail that includes:

(1) The most recent will submitted with the probate case and any codicils to that will; and

(2) A certificate of mailing with the mailing date signed by the person who mailed the notice.

(b) The notice will be mailed to you at least 21 days before the date of the hearing.

(c) A presumption of actual notice exists for any person to whom OHA sent a notice under this section unless the notice is returned by the Postal Service as undeliverable to the addressee.

[86 FR 72086, Dec. 20, 2021]

§ 30.211 How will OHA provide public notice of the formal probate proceeding?

(a) In addition to the mailed notice in § 30.210, OHA will also arrange for the posting of notice of probate hearings for formal probate proceedings at least 21 days before the date of the hearing.

(b) The notice may contain information for more than one hearing and will specify the names of the decedents, the probate case numbers of the cases, the dates of the decedents' deaths, the dates of the most recent wills filed with the probate cases, and the dates, times, and places of the hearings.

(c) OHA will post the notice on its website at the following link:*https://www.doi.gov/oha/organization/PHD*

(d) The judge may also cause notice to be published in a local newspaper or other publication if the judge determines that additional notice is appropriate.

(e) Unless one of the circumstances listed in paragraph (f) of this section is present, OHA will also arrange for the physical posting of the notice in each of the following locations:

(1) The home agency;

(2) The agency with jurisdiction over each parcel of trust or restricted property in the estate, if different from the home agency;

(3) A conspicuous place in the vicinity of the designated place of hearing, if the hearing is designated for a location other than the agency listed in paragraph (e)(1) or (2) of this section; and

(4) Additional locations if the judge determines that further posting is appropriate.

(f) OHA may proceed with the hearing without physical posting of the notice at an agency office if the notice is posted in a conspicuous place near that agency office and physical posting at the agency office was not possible due to the agency office being closed or inaccessible.

[86 FR 72086, Dec. 20, 2021, as amended at 88 FR 39769, June 20, 2023]

§ 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 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 in accordance with Federal law or Secretarially approved Tribal probate codes by heirs, devisees, co-owners, a Tribe or the Secretary; and

(h) State that the hearing may be continued to another time and place.

[73 FR 67289, Nov. 13, 2008, as amended at 86 FR 72087, Dec. 20, 2021]

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) If relevant, 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.

[73 FR 67289, Nov. 13, 2008, as amended at 86 FR 72087, Dec. 20, 2021]

§ 30.236 How are covered permanent improvements treated?

(a) In an intestate case, under the Act, an interest in a covered permanent improvement attached to a parcel of trust or restricted land is treated as shown in the following table:

If . . .	then the covered permanent improvement passes to . . .
(1) A Tribal probate code approved under 25 CFR part 18 specifies how the covered permanent improvement will be handled.	the person(s) designated in the Tribal probate code to receive it.
(2) A consolidation agreement approved under subpart F of this part specifies how the covered permanent improvement will be handled.	the person(s) designated in the consolidation agreement to receive it.
(3) There is neither an approved Tribal probate code nor an approved consolidation agreement that specifies how the covered permanent improvement will be handled, but there is a renunciation of the trust or restricted interest in the parcel under subpart H of this part.	the recipient of the trust or restricted interest in the parcel under the renunciation.
(4) There is neither an approved Tribal probate code nor an approved consolidation agreement that specifies how the covered permanent improvement will be handled, and there is no renunciation of the trust or restricted interest in the parcel under subpart H of this part.	each eligible heir to whom the trust or restricted interest in the parcel descends.

(b) In a testate case, under the Act, an interest in a covered permanent improvement attached to a parcel of trust or restricted land is treated as shown in the following table:

If . . .	then the covered permanent improvement passes to . . .
(1) The will expressly states how the covered permanent improvement will be handled.	the person(s) designated in the will to receive it.
(2) The will does not expressly state how the covered permanent improvement will be handled.	the person(s) designated in the will to receive the trust or restricted interest in the parcel.

(c) The provisions of the Act apply to a covered permanent improvement:

(1) Even though it is not held in trust; and

(2) Without altering or otherwise affecting its non-trust status.

(d) The judge's decision will specifically direct the distribution only of the decedent's trust or restricted property, and not any non-trust permanent improvement attached to a parcel of trust or restricted land. However, the judge:

(1) Will include in the decision a general statement of the substantive law of descent or devise of permanent improvements; and

(2) Can approve a consolidation agreement under subpart F of this part that includes a covered permanent improvement.

[76 FR 7507, Feb. 10, 2011]

§ 30.237 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.

[73 FR 67289, Nov. 13, 2008. Redesignated at 76 FR 7507, Feb. 10, 2011]

§ 30.238 May I file a petition for rehearing if I disagree with the judge's decision in the formal probate hearing?

(a) A petition for rehearing seeking to correct a substantive error may be filed by the BIA or by an interested party who is adversely affected by the decision.

(b) A petition for rehearing must be filed with the judge within 30 days after the date on which the decision was mailed under § 30.237.

(c) A petition for rehearing must allege an error of fact or law in the decision and must state specifically and concisely the grounds on which the petition is based. The petition may be supported with newly discovered evidence or evidence that was not available at the time of the hearing.

(d) If you are an interested party and you received proper notice of the hearing:

(1) You, or BIA on your behalf, may raise an issue on rehearing only if you raised it at or before the hearing, whether or not you attended the hearing. Any issue you raise for the first time on rehearing may be denied solely because you failed to timely raise the issue; and

(2) You may only use evidence on rehearing that was submitted at or before the hearing, if that evidence was available or discoverable to you at that time. Any new evidence you submit on rehearing may be disregarded by the judge, if it was available or discoverable to you at the time the hearing was held.

(e) If the petition is based on newly discovered evidence or evidence that was unavailable at the time of the hearing, it must:

(1) Be accompanied by documentation of that evidence, including, but not limited to, one or more affidavits of a witness stating fully the content of the new evidence; and

(2) State the reasons for failure to discover and present that evidence at the hearings held before issuance of the decision.

(f) OHA will send to BIA a notice of receipt of a petition for rehearing as soon as practicable, ordering that the decedent's estate not be distributed during the pendency of the petition for rehearing. OHA will also forward a copy of the petition and any documents filed with the petition to the interested parties and affected agencies.

[86 FR 72087, Dec. 20, 2021]

§ 30.239 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.

[86 FR 72087, Dec. 20, 2021]

§ 30.240 How will the judge decide a petition for rehearing?

(a) The judge may consider a petition as a petition for reopening if the petition for rehearing is not timely filed.

(b) The judge may summarily deny the petition based on the deficiencies of the petition. A summary denial is an order in which the judge denies the petition without deciding the merits of the issues raised in the petition and is warranted if:

(1) The petition alleges mere disagreement with a decision;

(2) The petition is based on newly discovered evidence and fails to meet the requirements of § 30.238(e); or

(3) The petition is based solely on issues or evidence described in § 30.238(d)(1) or (2).

(c) If the petition fails to show proper grounds for rehearing, the judge will issue an order denying the petition for rehearing and including the reasons for denials.

(d) If the petition shows proper grounds for rehearing, the judge must:

(1) Cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest in the estate may be affected if the petition is granted;

(2) Allow all persons served a reasonable, specified time in which to respond to the petition for rehearing; and

(3) Consider with or without a hearing, the issues raised in the petition.

(e) The judge may affirm, modify, or vacate the former decision.

(f) On entry of a final order, including a summary denial, the judge must distribute the order to the petitioner, the agencies, and the interested parties. The order must include a notice stating that interested parties who are adversely affected, or BIA, have the 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.

[86 FR 72087, Dec. 20, 2021]

§ 30.241 May I submit another petition for rehearing?

No. Successive petitions for rehearing may not be filed by the same party or BIA in the same probate case.

[86 FR 72087, Dec. 20, 2021]

§ 30.242 When does the judge's order on a petition for rehearing become final?

The order 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. The jurisdiction of the judge terminates when he or she issues an order finally disposing of a petition for rehearing, except for the reopening of a case under this part.

[86 FR 72087, Dec. 20, 2021]

§ 30.243 May a closed probate case be reopened?

A closed probate case may be reopened if the decision or order issued in the probate case contains an error of fact or law (including, but not limited to, a missing or improperly included heir or devisee, a found will, or an error in the distribution of property), and the error is discovered more than 30 days after the mailing date of a decision.

(a) Any interested party or BIA may seek correction of the error of fact or law by filing a petition for reopening with the judge.

(b) Reopening may also be initiated on a judge's own motion.

[86 FR 72087, Dec. 20, 2021, as amended at 88 FR 39769, June 20, 2023]

§ 30.244 When must a petition for reopening be filed?

(a) A petition for reopening to correct an error of fact or law in a decision or post-decision order may be filed at any time, but if a petition for reopening is filed by an interested party, or by BIA on behalf of an interested party, it must be filed within 1 year after the interested party's discovery of the alleged error.

(b) If a petition for reopening to correct an error of fact or law in the original decision is filed before the deadline to file a petition for rehearing has passed, it will be treated as a petition for rehearing.

[86 FR 72087, Dec. 20, 2021]

§ 30.245 What legal standard will be applied to reopen a case?

(a) If a petition for reopening is filed within 3 years or less of the date of the decision or order, the judge may reopen the case to correct an error of fact or law in the decision or order.

(b) When a petition for reopening is filed more than 3 years after the date of the decision or order, the judge may reopen the case if the judge finds that the need to correct the error outweighs the interests of the public and heirs or devisees in the finality of the probate proceeding.

[86 FR 72087, Dec. 20, 2021]

§ 30.246 What must be included in a petition for reopening?

(a) A petition for reopening must:

(1) State specifically and concisely the grounds on which the petition is based; and

(2) Include all relevant evidence in the form of documents and/or sworn affidavits supporting any allegations and relief requested in the petition.

(b) A petition filed by an interested party or by BIA on behalf of an interested party must also:

(1) State the date the interested party discovered the alleged error;

(2) Include all relevant evidence in the form of documents and/or sworn affidavits, concerning when and how the interested party discovered the alleged error;

(c) A petition filed more than 3 years after the date of the decision or order must show that the need to correct the error outweighs the interests of the public and heirs or devisees in the finality of the probate proceeding, which may be shown by addressing the following factors in the petition, as applicable:

(1) The nature of the error;

(2) The passage of time;

(3) Whether the interested party exercised due diligence in pursuing his or her rights;

(4) Whether the interested party's ancestor exercised due diligence in pursuing his or her rights and whether a failure to exercise should be imputed to the interested party;

(5) The availability of witnesses and documents;

(6) The general interest in administrative finality;

(7) The number of other estates that would be affected by the reopening, if known; and

(8) Whether the property that was in the estate is still available for redistribution if the case is reopened, if known.

[86 FR 72087, Dec. 20, 2021]

§ 30.247 What is not appropriate for a petition for reopening?

A petition for reopening may not:

(a) Raise issues or objections that were already addressed in a prior rehearing or reopening order;

(b) Raise issues or objections when the interested party had the opportunity to raise them earlier because they received proper notice of the hearing or summary decision; or

(c) Submit evidence that was available or discoverable at the time the decision was issued, or available during the rehearing period. The requirements at § 30.238(e) concerning presentation of new evidence on rehearing also apply to the presentation of new evidence on reopening.

[86 FR 72088, Dec. 20, 2021]

§ 30.248 How will the judge decide my petition for reopening?

(a) The judge may summarily deny the petition for reopening based on deficiencies in the petition. A summary denial is an order in which the judge denies the petition without deciding the merits of the allegations in the petition and is warranted if:

(1) The petition alleges mere disagreement with a decision;

(2) The petition raises issues or objections that were previously addressed in a rehearing order or reopening order;

(3) The petition raises only issues or objections by or on behalf of an interested party for the first time on reopening and that interested party received proper notice of the hearing or summary decision;

(4) The petition is based on newly discovered evidence and fails to meet the requirements of § 30.238(e); or

(5) The petition is based solely on issues or evidence described in § 30.247(c).

(b) If a summary denial is not warranted, the judge will review the merits of the petition to determine if the petition asserts proper grounds for reopening.

(1) If the petition fails to assert proper grounds for reopening, then the judge will issue an order denying the petition for reopening and addressing the merits of the petition.

(2) If the petition asserts proper grounds for reopening, the judge will:

(i) Cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest in the estate may be affected if the petition is granted;

(ii) Allow all persons served a reasonable, specified time in which to respond to the petition for reopening by filing responses, cross-petitions, or briefs;

(iii) Suspend further distribution of the estate or income during the reopening proceedings, if appropriate, by order to the affected agencies;

(iv) Consider, with or without a hearing, the issues raised in the petition; and

(v) Affirm, modify, or vacate the decision or order.

(c) On entry of a final order, including a summary denial, the judge must distribute the order to the petitioner, the agencies, and the interested parties. The order must include a notice stating that interested parties who are adversely affected, or BIA, have the right to appeal the final order to the Board, within 30 days of the mailing date, and giving the Board's address.

[86 FR 72088, Dec. 20, 2021, as amended at 88 FR 39769, June 20, 2023]

§ 30.249 What happens when the judge issues an order on reopening?

(a) Copies of the judge's order on reopening must be mailed to the petitioner, the affected agencies, and all interested parties.

(b) The judge must submit the record made on a reopening petition to the designated LTRO.

(c) The order 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.

[86 FR 72088, Dec. 20, 2021]

§ 30.250 May a correction order be issued to correct typographical and other non-substantive errors?

If, after issuance of a decision or other probate order, it appears that the decision or other probate order contains non-substantive errors, the judge may issue a correction order to correct them. Errors are non-substantive if they are merely typographical, clerical, or their correction would not change the distribution of a decedent's property.

(a) A judge may issue a correction order for the purpose of correcting nonsubstantive errors on the judge's own motion. A request for correction order may also be filed by BIA or an interested party at any time.

(b) Copies of the correction order will be sent to BIA and all interested parties.

(c) The correction order is not subject to appeal to the Board.

[86 FR 72089, Dec. 20, 2021]

§ 30.251 What happens if BIA identifies additional property of a decedent after the probate decision is issued?

If, after issuance of a decision, BIA identifies additional trust or restricted property of a decedent that it had not already identified at the time of the decision, then BIA will submit a petition to OHA for an order directing distribution of the additional property.

(a) OHA will accept the petition at any time after issuance of the decision.

(b) The judge will review the petition to ensure that the petition identifies the additional property and the source of that property (*e.g.*, inheritance or approval of a deed) and includes the following:

(1) A certified inventory describing the additional trust or restricted land, if applicable, or, if the additional property is trust personalty, documents verifying the balance and source of the additional trust personalty, and a statement that the inventory lists only the property to be added;

(2) A copy of the decision, or modification or distribution order and corresponding inventory issued in the probate case from which the property was inherited by the decedent, if applicable;

(3) A statement identifying each newly added share of any allotment that increases the decedent's total share of the ownership interest of the allotment to 5 percent or more;

(4) A copy of BIA's notification to the Tribes with jurisdiction over the interests of the list of the additional interests that represent less than 5 percent of the entire undivided ownership of each parcel (after being added to the decedent's estate) under 25 CFR 15.401(b); and

(5) A certification that all interested parties have been associated to the case and their names and addresses are current.

(c) The judge may, at the judge's discretion, either:

(1) Deny the request for good cause; or

(2) Address the request with or without a hearing.

(d) If the judge does not deny the petition, the judge will issue an order that directs distribution of the additional property. The order may direct that the additional property be distributed in the same manner as property already addressed in the decision, or the order may direct that the additional property be distributed in a different manner than property already addressed in the decision.

(e) The judge must furnish copies of the distribution order to the agency and to all interested parties who share in the estate. The distribution order will notify all heirs or devisees, including any surviving spouse, of the right to seek reconsideration to:

(1) Object to the findings and conclusions of the distribution order;

(2) Renounce their interest(s) in any of the additional property;

(3) Include the additional property in an existing or new consolidation agreement;

(4) Allege an error in BIA's inventory of additional property under § 30.128; or

(5) File a request to purchase the additional property at probate.

(f) The distribution order will also instruct the heirs or devisees that they must notify OHA in writing of their request for reconsideration of the distribution order within 30 days of the mailing of the distribution order, and that their right to seek reconsideration will be waived if they fail to notify OHA in writing by the deadline. For purposes of filing the request for reconsideration, the written submission will be considered to be filed with OHA on the date it is postmarked or faxed to OHA.

(g) If OHA does not receive a timely request for reconsideration, the distribution order will become final on the 45th day after the mailing date. An untimely filed request for reconsideration will not be considered by OHA

and will not disturb the finality of the distribution order.

[86 FR 72089, Dec. 20, 2021]

§ 30.252 What happens if BIA identifies that property was incorrectly included in a decedent's inventory?

If, after issuance of a decision, BIA identifies certain trust or restricted property or an interest therein that was incorrectly included in a decedent's inventory, then BIA will submit a petition to OHA for an order notifying all heirs or devisees of the correction and addressing any changes in distribution of property resulting from the correction.

(a) OHA will accept the petition at any time after issuance of the decision.

(b) The judge will review the petition to ensure that it identifies the property that BIA removed from the estate, explains why the property should not have been included, and includes the following:

(1) A newly issued certified inventory describing the trust or restricted land remaining in decedent's estate, if applicable;

(2) A copy of the decision, or modification or distribution order and corresponding inventory issued in the probate case from which BIA discovered that the property was incorrectly included in the decedent's estate, if applicable;

(3) A statement identifying each property in the decedent's estate that decreased to a total share of the ownership of the allotment to less than 5 percent as a result of the removal of property from the estate; and

(4) A certification that all interested parties have been associated to the case and their names and addresses are current.

(c) The judge may, at the judge's discretion, either:

(1) Deny the request for good cause; or

(2) Address the request with or without a hearing.

(d) If the judge does not deny the petition, the judge will issue an order that addresses any modifications to the distribution of the decedent's property resulting from the correction of the inventory. The order may find that the correction of the inventory does not modify the distribution of any remaining property in the estate.

(e) The judge must furnish copies of the distribution order to the agency and to all interested parties who share in the estate. The distribution order will inform all heirs or devisees, including any surviving spouse, of the right to seek reconsideration to:

(1) Object to the findings and conclusions of the distribution order; or

(2) Allege an error in BIA's inventory under § 30.128.

(f) The distribution order will also instruct the heirs or devisees that they must notify OHA in writing of their objection to the distribution order within 30 days of the mailing of the distribution order, and that their right to seek reconsideration will be waived if they fail to notify OHA in writing by the deadline. For purposes of filing the request for reconsideration, the written submission will be considered to be filed with OHA on the date it is postmarked or faxed to OHA.

(g) If OHA does not receive a timely request for reconsideration, the distribution order will become final on the 45th day after the mailing date. An untimely filed request for reconsideration will not be considered by OHA and will not disturb the finality of the distribution order.

[86 FR 72089, Dec. 20, 2021]

§ 30.253 What happens if a request for reconsideration of a distribution order is timely made?

(a) If an heir, devisee, BIA or Tribe files a timely request for reconsideration, OHA will:

(1) Send to BIA a notice of receipt of a petition for reconsideration as soon as practicable, ordering that the newly added property not be distributed or incorrectly included property not be removed, as applicable, during the pendency of the petition for reconsideration; and

(2) Forward a copy of the petition and any documents filed with the petition to the interested parties and affected agencies.

(b) The agencies must not distribute any portion of the estate while the petition is pending, unless otherwise directed by the judge.

(c) If proper grounds for reconsideration are not shown, the judge will issue an order denying the petition for reconsideration and including the reasons for the denial.

(d) If proper grounds for reconsideration are shown, the judge must:

(1) Allow all persons served a reasonable, specified time in which to submit answers or legal briefs in response to the petition; and

(2) Consider, with or without a hearing, the issues raised in the petition, including requests to renounce, requests to purchase newly added properties at probate, and requests to include newly added property in an existing or new consolidation agreement.

(e) The judge will not reconsider findings made in the decision; the judge will only reconsider findings made in the distribution order regarding the distribution of the additional property or modification to distribution resulting from the inventory correction, as applicable.

(f) If an interested party raises an inventory dispute in the petition for reconsideration, the judge may order that the distribution order is vacated and remand the BIA's petition to the BIA under § 30.128 to resolve the inventory dispute.

(g) The judge will issue a final order on reconsideration which may affirm, modify, or vacate the distribution order.

(h) On entry of a final order on reconsideration, the judge must distribute the order to the petitioner, the agencies, and the interested parties. The order must include notice stating that interested parties who are adversely affected, or BIA, have the 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.

(i) Neither BIA nor any interested party may file successive petitions for reconsideration.

(j) The order on a petition for reconsideration 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.

[86 FR 72089, Dec. 20, 2021]

Subpart K [Reserved]

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 § 30.238 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.

[73 FR 67289, Nov. 13, 2008, as amended at 76 FR 7508, Feb. 10, 2011]

§ 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 § 30.237.

[73 FR 67289, Nov. 13, 2008, as amended at 76 FR 7508, Feb. 10, 2011]

§ 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.

Subpart M—Purchase at Probate

SOURCE: 86 FR 72090, Dec. 20, 2021, unless otherwise noted.

§ 30.400 What may be purchased at probate?

(a) The judge may allow an eligible purchaser to purchase at probate all or part of the trust or restricted land in the estate of a person who died on or after June 20, 2006. Any interest in trust or restricted land, 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, except as provided in paragraph (b) of this section.

(b) Purchase of minerals-only real property interests (*i.e.*, an allotment that does not include a surface interest) may be considered for purchase at probate only if sufficient evidence of the fair market value of the real property interest is submitted. No interest in a minerals-only property may be purchased at probate on the basis of the value of the minerals themselves.

§ 30.401 Who may purchase at probate?

An eligible purchaser at probate is any of the following:

(a) Any devisee or eligible heir who is receiving an interest in the same parcel of land by devise or descent in the probate proceeding;

(b) Any co-owner;

(c) The Indian Tribe with jurisdiction over the parcel containing the interest; or

(d) The Secretary on behalf of the Tribe.

§ 30.402 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.

§ 30.403 Is consent required for a purchase at probate?

(a) Except as provided in paragraph (e) of this section, to purchase at probate a decedent's interest in trust or restricted property, the eligible purchaser must have the consent of:

(1) The heir or devisee of the share to be purchased;

(2) Any surviving spouse whose share is to be purchased and who receives a life estate under 25 U.S.C. 2206(a)(2)(A) or (D); or

(3) Any recipient of an interest received under an approved consolidation agreement whose share is to be purchased.

(b) If consent is required from an heir or devisee for a purchase at probate, the consent may be given either:

(1) During a hearing as part of the record; or

(2) In writing to OHA.

(c) An heir or devisee's failure to attend a hearing or respond to an order will not be presumed to constitute consent.

(d) An heir or devisee may withdraw consent at any time before the purchase is final.

(1) To notify OHA, the heir or devisee must state, either on record at the probate hearing, or in writing to OHA, that the heir or devisee is not willing to consent to sell the property under any circumstances and/or is not willing to consider any bids to purchase the property interest.

(2) When OHA receives such notice, it will deny the request to purchase the property interest to which the notice applies.

(e) If you are the Tribe with jurisdiction over the parcel containing the interest, you do not need the consent of those listed under paragraph (a) of this section if the following five conditions are met:

(1) The interest will descend by intestate succession;

(2) The judge determines based on the Department's records that the decedent's interest at the time of death was less than 5 percent of the entire undivided ownership of the parcel of land;

(3) The heir or surviving spouse was not residing on the property at the time of the decedent's death;

(4) The heir or surviving spouse is not a member of your Tribe or eligible to become a member; and

(5) The interest is not included in an approved consolidation agreement.

(f) BIA may purchase an interest in trust or restricted land on behalf of the Tribe with jurisdiction over the parcel containing the interest if BIA obtains consent under paragraph (a) of this section or the conditions in paragraph (e) of this section are met.

[86 FR 72090, Dec. 20, 2021, as amended at 88 FR 39769, June 20, 2023]

§ 30.404 How do I initiate a purchase at probate?

Any eligible purchaser may initiate a purchase at probate by submitting a written request to OHA to purchase at probate.

§ 30.405 When may I initiate a purchase at probate?

(a) To initiate a purchase at probate during the initial probate proceeding, the eligible purchaser must submit the written request before the completion of the first probate hearing.

(b) If a property interest the eligible purchaser would like to purchase has been added to the decedent's estate under § 30.251, the purchaser must submit the written request within 30 days of the mailing of the distribution order issued under § 30.251(d).

§ 30.406 May I withdraw my request to purchase at probate?

At any point before the purchase is complete, a purchaser may withdraw a request to purchase at probate. In order to withdraw a request to purchase, the requester must file with OHA a written statement that the request is withdrawn. The requester is not required to provide reasons or justification for withdrawal of the request.

§ 30.407 How will OHA address requests to purchase at probate?

The judge has discretion to deny a request to purchase at probate in the decision or at any time thereafter. If one or more requests to purchase at probate are timely filed, OHA will address those requests in the probate decision (or reconsideration order if the request to purchase is for property that has been added to the decedent's estate under § 30.251) and either deny the requests at that time or provide instructions for continuing the purchase at probate process.

§ 30.408 What will OHA include in the probate decision or reconsideration order when a purchase at probate request is pending?

(a) If a purchase at probate request is pending at the time the probate decision (or reconsideration order under § 30.251) is issued, and is not denied in

the decision (or reconsideration order), the decision (or reconsideration order) will include the following to address the request:

(1) A list of all requests to purchase at probate that have been submitted;

(2) Notification to the parties as to whether consent of the applicable heirs or devisees is required to approve the requested purchase; and

(3) Direction to BIA to obtain an appraisal or valuation for each interest for which a purchase at probate request has been submitted.

(b) If the purchase of the interest requires consent of the applicable heirs or devisees, the probate decision or reconsideration order will also:

(1) Direct the heirs or devisees to submit written notification within 30 days of the mailing date of the decision or reconsideration order that the heirs or devisees would consider selling the interest to an eligible purchaser during the probate process if a bid is made for fair market value or greater;

(2) Inform the heirs or devisees that OHA may consider failure to provide such written notification as a refusal to consent to sell the property during probate, and may rely on such refusal to deny the request to purchase at probate; and

(3) Direct BIA to postpone seeking an appraisal/valuation of that property until BIA receives future notice from OHA that at least one heir or devisee has filed the written notification that the heir or devisee would consider selling the interest.

§ 30.409 How will a pending purchase at probate request affect how the decedent's property is distributed?

When the decision (or distribution order following a reconsideration order under § 30.251) becomes final, BIA may distribute the estate as stated in the decision or distribution order. The decision or distribution order will identify any property interest that is the subject of a pending request for purchase at probate, and that the property interest will be conveyed with an encumbrance, which will remain on the property interest until the request is fully addressed. The encumbrance does not affect distribution of trust personalty.

§ 30.410 How will the purchase at probate process continue after the decision or reconsideration order is issued?

After a decision or reconsideration order is issued:

(a) If consent is required for the purchase of an interest, and an heir or devisee does not submit written notification that he or she would consider selling the interest by the deadline OHA established, the request to purchase the applicable property interest(s) is denied by operation of law. In such cases, OHA will notify the BIA that it may remove the encumbrance remaining on the applicable property interest(s).

(b) If the heirs or devisees submit the written notification that they would consider selling the interest by the deadline OHA established, then OHA will notify BIA that it may obtain an appraisal/valuation of the property.

(c) In any other instances in which a purchase request is denied, BIA may remove any encumbrance remaining on the applicable property interest(s).

§ 30.411 How will the interests to be purchased at probate be valued?

(a) For each parcel for which a request to purchase has been submitted, BIA will obtain appraisal(s) or other fair market valuation(s) in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) or other approved valuation methods under 25 U.S.C. 2214.

(b) Any appraisal/valuation must be made on the basis of the fair market value of the parcel as of the date of the decedent's death.

(c) No valuation document filed by the BIA, aside from an appraisal, will be used to determine the fair market value of trust land during a purchase at probate unless the document clearly states that it assesses the fair market value of the real property interest or is accompanied by a certification that it does so.

§ 30.412 What will OHA do when it receives BIA's notification that an appraisal/valuation has been completed?

When OHA receives BIA's notification that an appraisal/valuation has

been completed and BIA files a Petition to Complete Purchase at Probate, OHA will issue an Order to Submit Bids to all potential bidders to submit bids for property interests with pending purchase at probate requests.

(a) Potential bidders may submit bids even if they have not previously submitted a request to purchase at probate.

(b) OHA will identify the individuals/entities who are eligible to submit bids for each property interest available for purchase at probate.

§ 30.413 Who are potential bidders?

(a) The Tribe will be the only potential bidder and no other bids will be accepted if:

(1) The Tribe with jurisdiction over the property submits the only request to purchase within the deadline; and

(2) The requirements of § 30.403(e) (*i.e.*, consent of the heir is not required) are met.

(b) In other situations, potential bidders may include:

(1) Any eligible purchaser who has satisfied the requirements of §§ 30.404 and 30.405;

(2) Eligible heirs;

(3) Eligible devisees;

(4) The Indian Tribe with jurisdiction over the property interest; and

(5) Co-owners who have previously notified BIA in writing that they wish to receive probate notices concerning that allotment.

[86 FR 72090, Dec. 20, 2021, as amended at 88 FR 39769, June 20, 2023]

§ 30.414 What will be contained in the Order to Submit Bids?

For each property for which a request to purchase at probate is pending, the Order to Submit Bids will include:

(a) A finding of the fair market value of the interest to be sold, determined in accord with the appraisal/valuation provided by the BIA under § 30.411;

(b) Information concerning where a copy of the appraisal/valuation may be viewed;

(c) Direction to potential bidders to submit bids to purchase the property that are equal to or greater than the fair market value;

(d) A deadline by which OHA must receive bids from all potential bidders; and

(e) A statement that if no bids are submitted by the deadline, the request to purchase will be denied.

§ 30.415 What may I do if I do not agree with the determination of fair market value in the Order to Submit Bids?

(a) You may object to the determination of fair market value stated in the Order to Submit Bids if:

(1) You are the heir, devisee, or surviving spouse whose interest is to be sold;

(2) You filed a written request to purchase; or

(3) You are any potential bidder or other party who may be affected by the determination of the fair market value.

(b) To object to the determination of fair market value:

(1) You must file a written objection with OHA no later than 45 days after the mailing date of the Order to Submit Bids.

(2) The objection must:

(i) State the reasons for the objection; and

(ii) Include any supporting documentation showing why the fair market value should be modified.

(3) You must provide copies of the written objection and any supporting documentation to all parties who have an interest in the purchase of the property.

(c) Any party who may be affected by the determination of the fair market value may file a response to the written objection with OHA no later than 45 days after the date the written objection was served on the interested parties. Any document supporting the party's response must be submitted with the response.

(d) The judge will consider any timely submitted written objection and responses, and will determine whether to modify the finding of fair market value, with or without a valuation hearing. OHA will issue a Modified Order to Submit Bids that addresses the objection and responses.

(e) If you were directed to submit a bid, you may preserve your right to

submit a bid by filing the written objection instead of a bid.

[86 FR 72090, Dec. 20, 2021, as amended at 88 FR 39769, June 20, 2023]

§ 30.416 How does OHA decide whether a bid is successful?

OHA will decide that a bid is successful if it meets the following requirements:

(a) The bid is equal to or greater than the fair market value of the interest and was timely filed.

(b) In cases in which consent of an heir, devisee, or surviving spouse is required for the purchase, the applicable heir devisee, or surviving spouse accepts a bid.

(1) OHA may hold a hearing for the purpose of determining whether the applicable heir, devisee, or surviving spouse accepts a bid.

(2) If multiple bids are submitted, the applicable heir, devisee, or surviving spouse may choose which bid to accept.

(3) If the applicable heir, devisee, or surviving spouse does not accept any bid for his or her property interest, the request to purchase that property interest at probate will be denied.

[86 FR 72090, Dec. 20, 2021, as amended at 88 FR 39769, June 20, 2023]

§ 30.417 How does the judge notify the parties whether there was a successful bid?

(a) When a judge determines that a bid is successful, the judge will issue a Notice of Successful Bid to all bidders, BTFA, the BIA agency that prepared the probate file, and the BIA agency having jurisdiction over the interest sold. The Notice of Successful Bid will include the following information:

(1) The parcel and interest sold;

(2) The identity of the successful bidder;

(3) The amount of the successful bid; and

(4) Instructions to the successful bidder to submit payment for the interest.

(b) If no successful bids are received, the judge will issue an order denying the request to purchase the property.

[86 FR 72090, Dec. 20, 2021, as amended at 88 FR 39769, June 20, 2023]

§ 30.418 When must the successful bidder pay for the interest purchased?

The successful bidder must make payment, according to the instructions in the Notice of Successful Bid, of the full amount of the purchase price no later than 30 days after the mailing date of the Notice of Successful Bid.

§ 30.419 What happens after the successful bidder submits payment?

When the judge is notified by BIA that BIA has received payment, the judge will issue an order:

(a) Approving the sale and stating that title must transfer as of the date the order becomes final; and

(b) For the sale of an interest subject to a life estate, directing allocation of the proceeds of the sale and accrued income among the holder of the life estate and the holders of any remainder interests using 25 CFR part 179.

§ 30.420 What happens if the successful bidder does not submit payment within 30 days?

(a) If the successful bidder fails to pay the full amount of the bid within 30 days, the judge will issue an order denying the request to purchase or the bid (whichever is applicable) and the interest in the trust or restricted property will be distributed as determined by the judge in the decision or distribution order.

(b) The time for payment may not be extended.

(c) Any partial payment received will be returned.

§ 30.421 When does a purchased interest vest in the purchaser?

If the request to purchase (or a bid submitted by a potential bidder) is approved, the purchased interest vests in the purchaser on the date OHA's order approving the sale becomes final.

§ 30.422 What will happen to any lease income received or accrued from purchased land interests before the purchased interest vests in the purchaser?

Any lease income received or accrued from a property interest before the date the purchased interest vests in the purchaser will be paid to the heir(s), devisee(s), or surviving spouse from

whom purchase of the interest was made based on the fractional ownership interests in the parcel as determined in the decision or distribution order.

§ 30.423 What may I do if I disagree with the judge's determination to approve or deny a purchase at probate?

If you are an interested party who is adversely affected by the judge's order to approve or deny a purchase at probate, you may file an appeal to the Board within 30 days after the mailing date of OHA's order approving or denying the purchase at probate.

§ 30.424 When will the order approving or denying the purchase at probate become final?

The order to approve or deny the purchase at probate becomes final at the end of the 30-day appeal period, unless a timely appeal is filed.

Subpart N—Miscellaneous

SOURCE: 73 FR 67289, Nov. 13, 2008, unless otherwise noted. Redesignated at 86 FR 72089, Dec. 20, 2021

§ 30.500 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.

[73 FR 67289, Nov. 13, 2008. Redesignated at 86 FR 72089, Dec. 20, 2021]

§ 30.501 When is joint tenancy presumed?

A judge will presume that a testator intended to devise interests in joint tenancy when:

(a) A testator devises trust or restricted interests in the same parcel of land to more than one person; and

(b) The will does not contain clear and express language stating that the devisees receive the interests as tenants in common.

[86 FR 72093, Dec. 20, 2021]

§ 30.502 How does a judge resolve conflicts between the anti-lapse provision and the presumption of joint tenancy?

If the presumption of joint tenancy and anti-lapse provisions conflict, then the judge will give priority to the presumption of joint tenancy and the share of the deceased devisee will descend to the surviving devisees.

[86 FR 72093, Dec. 20, 2021]

§ 30.503 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.

[73 FR 67289, Nov. 13, 2008. Redesignated at 86 FR 72089, Dec. 20, 2021]

§ 30.504 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.

[73 FR 67289, Nov. 13, 2008. Redesignated at 86 FR 72089, Dec. 20, 2021]

§ 30.505 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.

[73 FR 67289, Nov. 13, 2008. Redesignated at 86 FR 72089, Dec. 20, 2021]

§ 30.506 When a decedent died intestate without heirs, what law applies to trust or restricted property?

The law that applies to trust or restricted property when a decedent died intestate without heirs depends upon whether the decedent died before June 20, 2006 or on or after June 20, 2006.

(a) When the judge determines that a decedent died before June 20, 2006, intestate without heirs, the judge will apply 25 U.S.C. 373a or 25 U.S.C. 373b to address distribution of trust or restricted property in the decedent's estate. If it is necessary to determine the value of an interest in land located on the public domain, to properly apply 25 U.S.C. 373b, the judge will determine fair market value based on an appraisal or other valuation method developed by the Secretary under 25 U.S.C. 2214. If the interest in land located on the public domain is valued at more than $50,000, the judge's decision concerning distribution of that interest will be a recommended decision only.

(b) When the judge determines that a decedent died intestate on or after June 20, 2006, without surviving lineal descendants, parents, or siblings who are eligible heirs, the judge will apply provisions of the Act to determine distribution of trust or restricted land in the decedent's estate.

(1) If the decedent died without surviving lineal descendants, parents, or siblings who are eligible heirs, and the decedent owned at least 5 percent of an allotment, that interest will be distributed either to the Indian Tribe with jurisdiction over the interest or, if there is no Indian Tribe with jurisdiction, then split equally among the co-owners as of the decedent's date of death, subject to the exceptions and limitations detailed in 25 U.S.C. 2206(a)(2)(B)–(C).

(2) If the decedent died without surviving lineal descendants who are eligible heirs, and the decedent owned less than 5 percent of an allotment, that interest will be distributed either to the Indian Tribe with jurisdiction over the interest or, if there is no Indian Tribe with jurisdiction, then split equally among the co-owners as of the decedent's date of death, subject to the exceptions and limitations concerning small fractional interests detailed in 25 U.S.C. 2206(a)(2)(D).

(3) For either paragraph (b)(1) or (2) of this section, the judge will also determine whether the decedent had a surviving spouse, and whether the surviving spouse is entitled to a life estate.

[86 FR 72093, Dec. 20, 2021]

§ 30.507 How will trust personalty be distributed if decedent died intestate on or after June 20, 2006, and the Act does not specify how the trust personalty should be distributed?

When the judge determines that a decedent died intestate on or after June 20, 2006, without a surviving spouse or eligible heirs under the Act, and without trust or restricted land over which one, and only one, Indian Tribe has jurisdiction, the judge will direct distribution of trust personalty, including trust funds that were on deposit in the decedent's IIM account or owing to the decedent as of the decedent's date of death, as follows:

(a) To the decedent's surviving children, grandchildren, great-grandchildren, parents, or siblings who are not eligible heirs under the Act, in the order set forth in 25 U.S.C. 2206(a)(2)(B).

(b) If trust personalty does not descend under paragraph (a) of this section, then to the decedent's surviving nieces and nephews, in equal shares.

(c) If trust personalty does not descend under paragraph (b) of this section, then to the Indian Tribe in which

the decedent was enrolled at the time the decedent died.

(d) If trust personalty does not descend under paragraph (c) of this section, then:

(1) To the Indian Tribe in which the decedent's biological parents were enrolled, if both were enrolled in the same Tribe;

(2) To the Indian Tribes in which the decedent's biological parents were enrolled, in equal shares, if each of the decedent's biological parents was enrolled in a different Tribe; or

(3) If only one biological parent was enrolled in an Indian Tribe, to the Indian Tribe in which that biological parent was enrolled.

(e) If trust personalty does not descend under paragraph (d) of this section, then:

(1) To the Indian Tribe in which the decedent's biological grandparents were enrolled; if all enrolled biological grandparents were enrolled in the same Tribe;

(2) To the Indian Tribes in which the decedent's biological grandparents were enrolled, in equal shares, if two or more of the decedent's biological grandparents were enrolled in different Tribes; or

(3) If only one biological grandparent was enrolled in an Indian Tribe, to the Indian Tribe in which that biological grandparent was enrolled.

(f) If trust personalty does not descend under paragraph (e) of this section, then to an Indian Tribe selected by the judge, in consideration of the following factors:

(1) The origin of the funds in the decedent's IIM account;

(2) The Tribal designator contained in the owner identification number or IIM account number assigned to the decedent by BIA; and

(3) The geographic origin of the decedent's Indian ancestors.

[86 FR 72094, Dec. 20, 2021]

PART 32—GRANTS TO STATES FOR ESTABLISHING YOUNG ADULT CONSERVATION CORPS (YACC) PROGRAM

Sec.

AUTHORITY: Pub. L. 95–93, sec. 806, 91 Stat. 630 (29 U.S.C. 801).

SOURCE: 43 FR 12266, Mar. 23, 1978, unless otherwise noted.

§ 32.1 Introduction.

(a) The Young Adult Conservation Corps (YACC) is authorized by title I of the Youth Employment and Demonstration Projects Act of 1977 (Pub. L. 95–93), which amends the Comprehensive Employment and Training Act (CETA) of 1973 by adding a new title VIII.

(b) The Young Adult Conservation Corps (YACC) is a year-round employment program for young men and women aged 16 through 23 inclusive. Financial assistance is available through grants-in-aid for employment and work to be performed on projects affecting both Federal and non-Federal public lands and waters or projects limited to non-Federal public lands and waters. YACC grants do not require matching.

(c) The YACC grant program is jointly managed by the Secretaries of the Interior and Agriculture under an interagency agreement with the Secretary of Labor.

(d) Thirty percent of the sums appropriated to carry out the YACC program for any fiscal year will be available for grants during such year. Grant funds will be allocated on the basis of the total youth population within each State. State YACC programs must consist of both residential and nonresidential projects. At least 25 percent of the State YACC program must be residential by September 30, 1978.

§ 32.2 Definitions.

The terms used in these regulations are defined as follows:

(a) *Act.* The Comprehensive Employment and Training Act of 1973, as amended.

(b) *YACC.* Young Adult Conservation Corps.