

## SUBCHAPTER C—PROBATE

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

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

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

SOURCE: 73 FR 67278, Nov. 13, 2008, unless otherwise noted.

#### Subpart A—Introduction

##### § 15.1 What is the purpose of this part?

(a) This part contains the procedures that we follow to initiate the probate of the estate of a deceased person for whom the United States holds an interest in trust or restricted land or trust personalty. This part tells you how to

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file the necessary documents to probate the estate. This part also describes how probates will be processed by the Bureau of Indian Affairs (BIA), and when probates will be forwarded to the Office of Hearings and Appeals (OHA) for disposition.

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

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

(2) Section 15.401(b).

[73 FR 67278, Nov. 13, 2008, as amended at 76 FR 7505, Feb. 10, 2011]

### § 15.2 What definitions do I need to know?

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

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

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

*Agency means:*

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

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

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

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

*Child* means a natural or adopted child.

*Codicil* means a supplement or addition to a will, executed with the same formalities as a will. It may explain,

modify, add to, or revoke provisions in an existing will.

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

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

*Day* means a calendar day.

*Decedent* means a person who is deceased.

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

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

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

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

*Department* means the Department of the Interior.

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

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

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

(1) Indian;

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

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

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

*Formal probate proceeding* means a proceeding, conducted by a judge, in which evidence is obtained through the

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testimony of witnesses and the receipt of relevant documents.

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

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

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

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

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

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

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

*Interested party* means:

(1) Any potential or actual heir;

(2) Any devisee under a will;

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

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

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

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

*Judge* means an ALJ or IPJ.

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

*LTRO* means the Land Titles and Records Office within BIA.

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

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

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

(1) Determine the heirs;

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

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

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

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

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

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

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

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

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

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

*Trust personality* means all tangible personal property, funds, and securities of any kind that are held in trust in an

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IIM account or otherwise supervised by the Secretary.

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

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

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

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

[73 FR 67278, Nov. 13, 2008, as amended at 76 FR 7505, Feb. 10, 2011]

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

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

**§ 15.4 What are the requirements for a valid will?**

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

**§ 15.5 May I revoke my will?**

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

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

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

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**§ 15.7 What is a self-proved will?**

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

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

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

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

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

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

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

Tribe of \_\_\_\_\_ or  
State of \_\_\_\_\_  
County of \_\_\_\_\_.

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

Testator \_\_\_\_\_

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

We, \_\_\_\_\_ and \_\_\_\_\_, swear or affirm under penalty of perjury that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ of the State of \_\_\_\_\_, published and declared the attached document to be his/her last will, signed the will in the presence of both of us, and requested both of us to sign the will as witnesses; that we, in compliance with his/her request, signed the will as witnesses in his/her presence and in the presence of each

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other; and that the testator was not acting under duress, menace, fraud, or undue influence of any person, so far as we could determine, and in our opinion was mentally capable of disposing of all his/her estate by will.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
(Title)

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

[76 FR 7505, Feb. 10, 2011]

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

The basic steps of the probate process are:

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

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

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

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

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

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

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

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

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

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

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

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

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

[73 FR 67278, Nov. 13, 2008, as amended at 76 FR 7505, Feb. 10, 2011]

**Subpart B—Starting the Probate Process**

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

There is no deadline for notifying us of a death.

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

(b) If we find out about the death of a person owning trust or restricted

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property we may initiate the process to collect the necessary documentation.

### § 15.102 Who may notify the agency of a death?

Anyone may notify us of a death.

### § 15.103 How do I begin the probate process?

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

- (a) The agency or BIA regional office nearest to where the decedent was enrolled;
- (b) Any agency or BIA regional office; or
- (c) The Trust Beneficiary Call Center in OST.

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

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

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

- (1) The State, city, reservation, location, date, and cause of death;
- (2) The last known address of the deceased;
- (3) Names and addresses of others who may have information about the deceased; and
- (4) Any other information available concerning the deceased, such as newspaper articles, an obituary, death notices, or a church or court record.

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

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

- (a) Originals or copies of all wills, codicils, and revocations, or other evidence that a will may exist;
- (b) The Social Security number of the decedent;
- (c) The place of enrollment and the tribal enrollment or census number of

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the decedent and potential heirs or devisees;

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

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

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

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

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

- (1) Marriage licenses and certificates of the decedent;
- (2) Divorce decrees of the decedent;
- (3) Adoption and guardianship records concerning the decedent or the decedent's potential heirs or devisees;
- (4) Use of other names by the decedent, including copies of name changes by court order; and
- (5) Orders requiring payment of child support or spousal support.

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

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

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

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

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

- (1) Search available electronic databases;
- (2) Inquire into other published information sources such as telephone directories and other available directories;
- (3) Examine BIA land title and lease records;

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

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

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

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

### § 15.107 Who prepares a probate file?

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

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

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

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

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

## Subpart C—Preparing the Probate File

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

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

file. Then we will transfer the probate file to OHA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Claims of creditors that have been submitted to us under § 15.302

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through 15.305, including documentation required by § 15.305.

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

(m) All the documents acquired under § 15.105.

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

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

[73 FR 67278, Nov. 13, 2008, as amended at 76 FR 7505, Feb. 10, 2011]

### **§ 15.203 What information must Tribes provide BIA to complete the probate file?**

Tribes must provide any information that we require or request to complete the probate file. This information may include enrollment and family history data or property title documents that pertain to any pending probate matter, and a copy of Tribal probate orders where they exist.

[76 FR 7505, Feb. 10, 2011]

### **§ 15.204 When is a probate file complete?**

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

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

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

## **Subpart D—Obtaining Emergency Assistance and Filing Claims**

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

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

(1) You are responsible for making the funeral arrangements on behalf of

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the family of a decedent who had an IIM account;

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

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

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

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

(1) The total amount in the IIM account;

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

(3) Any other relevant factors.

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

### **§ 15.302 May I file a claim against an estate?**

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

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

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

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

### **§ 15.304 When must I file my claim?**

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

### **§ 15.305 What must I include with my claim?**

(a) You must include an itemized statement of the claim, including copies of any supporting documents such

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as signed notes, account records, billing records, and journal entries. The itemized statement must also include:

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

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

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

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

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

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

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

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

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

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

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

### Subpart E—Probate Processing and Distributions

#### § 15.401 What happens after BIA prepares the probate file?

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

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

(b) Forward a list of fractional interests that represent less than 5 percent of the entire undivided ownership of

each parcel of land in the decedent's estate to the tribes with jurisdiction over those interests.

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

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

#### § 15.403 What happens after the probate order is issued?

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

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

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

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

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

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

### Subpart F—Information and Records

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

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

## § 15.502

### § 15.502 Who owns the records associated with this part?

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

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

(2) They are either:

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

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

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

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

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

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

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

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

### § 15.504 Who may inspect records and records management practices?

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

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

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

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

## PART 16—ESTATES OF INDIANS OF THE FIVE CIVILIZED TRIBES

Sec.

16.1 Definitions.

16.2 Scope of regulations.

16.3 Legal representation in State courts.

16.4 Exchange of information within the Department.

16.5 Acceptance and acknowledgement of service of process.

16.6 Authority of attorneys in State court litigation.

16.7 Performance of Federal functions by successor State courts.

16.8 Summary distribution of small liquid estates.

16.9 Escheat of estates of decedents.

AUTHORITY: 5 U.S.C. 301 (Interprets or applies Act of Apr. 26, 1906, ch. 1876, 34 Stat. 137, see 25 U.S.C. 355nt (1970); Act of May 27, 1908, ch. 199, 35 Stat. 312, see 25 U.S.C. 355nt (1970); Act of June 14, 1918, ch. 101, 40 Stat. 606, 25 U.S.C. 355, 375 (1970); Act of Apr. 12, 1926, ch. 115, 44 Stat. 239, see 25 U.S.C. 355nt (1970); Act of June 26, 1936, ch. 831, 49 Stat. 1967, 25 U.S.C. 501-509 (1970); Act of Aug. 4, 1947, ch. 458, 61 Stat. 731, 25 U.S.C. 502 (1970) and see 25 U.S.C. 355nt (1970); Act of Aug. 12, 1953, ch. 409, 67 Stat. 558, 25 U.S.C. 375c (1970) and see 25 U.S.C. 355nt (1970); Act of Aug. 11, 1955, ch. 786, 69 Stat. 666, see 25 U.S.C. 355nt (1970); Act of Aug. 29, 1967, Pub. L. 90-76, 81 Stat. 177, 25 U.S.C. 786-788 (1970); and Act of May 7, 1970, Pub. L. 91-240, 84 Stat. 203, 25 U.S.C. 375d (1970)).

SOURCE: 37 FR 7082, Apr. 8, 1972, unless otherwise noted.

## Bureau of Indian Affairs, Interior

## § 16.4

### § 16.1 Definitions.

(a) The term *Secretary* means the Secretary of the Interior and his authorized representatives.

(b) The term *Bureau* means the Bureau of Indian Affairs, acting through the Commissioner of Indian Affairs and his authorized representatives, including field officials who are responsible for matters affecting properties in which a restricted interest is owned by an Indian of the Five Civilized Tribes.

(c) The term *Field Solicitor* means the Regional Solicitor, Southwest Region, Page Belcher Federal Building, P.O. Box 3156, Tulsa, Oklahoma 74101.

(d) The term *Indian of the Five Civilized Tribes* means an individual who is either an enrolled member of the Cherokee, Chickasaw, Choctaw, Creek, or Seminole Tribes of Oklahoma, or a descendant of an enrolled member thereof.

(e) The term *restricted interest* means an interest owned in real or personal property subject to restraints upon alienation imposed either by Federal statute or by administrative action authorized by Federal statute. Although this term includes property subject to restraints which may be removed by administrative action, its use in this part refers primarily to property subject to restraints which State courts have jurisdiction to remove in proceedings such as those specified in § 16.2.

[37 FR 7082, Apr. 8, 1972, as amended at 50 FR 12529, Mar. 29, 1985]

### § 16.2 Scope of regulations.

The regulations in this part set forth procedures for discharging the responsibilities of the Secretary in connection with the performance by State courts, as authorized by Federal statutes, of certain functions which affect properties in which a restricted interest is owned by an Indian of the Five Civilized Tribes. These State court functions pertain to such proceedings as guardianship, heirship determination, will probate, estate administration, conveyance approval, partition of real property, confirmation of title to real property, and appeal from action removing or failing to remove restrictions against alienation. In addition,

the regulations in this part set forth procedures for discharging certain other responsibilities of the Secretary not necessarily involving State court functions, such as escheat of estates of deceased Indians of the Five Civilized Tribes.

### § 16.3 Legal representation in State courts.

The statutory duties of the Secretary to furnish legal advice to any Indian of the Five Civilized Tribes, and to represent such Indian in State courts, in matters affecting a restricted interest owned by such Indian, shall be performed by attorneys on the staff of the Solicitor, under the supervision of the Field Solicitor. Such advice and representation shall be undertaken to the extent that the Field Solicitor in his discretion shall consider necessary to discharge said duties, with due regard to the complexity of the legal action contemplated, the availability of staff attorneys for such purposes, the value and extent of the restricted interests involved, possible conflicts between Indians claiming to be owners of such interests, the preference of such owners concerning legal representation, the financial resources available to such owners, the extent to which such owners require similar legal services in connection with their unrestricted properties, and any other factor appropriate for consideration.

### § 16.4 Exchange of information within the Department.

To the extent that information may be useful in discharging the duties covered by the regulations in this part, the Bureau shall furnish to the Field Solicitor, either on a current basis or at periodic intervals, processes and notices received concerning court cases and information, as current and complete as may reasonably be obtainable, concerning the estate and status of an Indian of the Five Civilized Tribes for whom legal assistance should be rendered pursuant to the regulations in this part. Similarly, to the extent that such information may be useful for Bureau action or records, the Field Solicitor shall advise the Bureau of court proceedings, information received, and

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action taken in furnishing legal services pursuant to the regulations in this part.

### **§ 16.5 Acceptance and acknowledgment of service of process.**

Service by the Field Solicitor or any other person of any process or notice, pursuant to any Federal statute which by its express terms is applicable to Indians of the Five Civilized Tribes, may be accepted and acknowledged by the Field Solicitor, or by any attorney authorized to perform the duties specified in § 16.3, on behalf of the Secretary and the Bureau, notwithstanding any specific designation in such statute of the official to be served (such as the Secretary, superintendent for the Five Civilized Tribes, Probate Attorney, etc.).

### **§ 16.6 Authority of attorneys in State court litigation.**

Attorneys authorized to perform the duties specified in § 16.3 appearing in State court litigation in their official capacities are authorized to take such action as the Secretary could take if he were personally appearing in his official capacity as counsel therein, including but not limited to the filing or decision against filing of initial, responsive, or supplemental pleadings and appeals from adverse judgments, the exercise or decision against exercise of a preferential right to purchase property subject to sale, the removal or decision against removal of actions to Federal courts, and the waiver or decision against waiver of the failure to make timely service of process or notice.

### **§ 16.7 Performance of Federal functions by successor State courts.**

All authority to perform functions relating to Indians of the Five Civilized Tribes which by express provisions of Federal statute had been conferred upon probate or county courts of Oklahoma before such county courts were abolished on January 12, 1969, has since that date been vested in the successor district courts of that State, and all rights of litigants continue undiminished in the successor forum, including the right to appeal from ad-

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verse decisions rendered therein to the successor appellate court.

(Interprets or applies Okla. Op. Atty. Gen. No. 68-381 (Dec. 20, 1968))

### **§ 16.8 Summary distribution of small liquid estates.**

Where information, furnished by the Bureau pursuant to § 16.4 or otherwise obtained, reveals that the estate of a deceased Indian of the Five Civilized Tribes contains no restricted land but consists of a restricted interest in funds not exceeding \$500 on deposit to the credit of the decedent, the Field Solicitor shall, in the absence of any final decree determining the heirs or legatees of the decedent, prepare and furnish to the Bureau a finding and order of distribution, based on affidavit or other proof of death and heirship or bequest, setting forth the facts of death and heirship or bequest and the amount payable from the estate to each person determined to be an heir or legatee of the decedent. The Field Solicitor shall mail to each person considered a possible claimant to any portion of the estate, as an heir or legatee or otherwise, a copy of the order with a notice that the order shall become final 30 days after the date of mailing thereof unless within that period the officer by whom the order was signed shall have received a written request for reconsideration of the order. After final action on any order has been taken by the Field Solicitor, the Bureau shall distribute the funds in the estate of the decedent in accordance with such final action, unless a timely appeal therefrom has been filed in accordance with part 2 of this title.

### **§ 16.9 Escheat of estates of decedents.**

Where information, furnished by the Bureau pursuant to § 16.4 or otherwise obtained, reveals that the estate of a deceased Indian of the Five Civilized Tribes, who has been dead 5 or more years after having died intestate without heirs, consists of restricted interests in lands or rents or profits therefrom, the Field Solicitor shall, in the absence of any final decree determining that the decedent died without heirs or devisees, prepare and furnish to the Bureau a finding and order of escheat, based on affidavit or other proof

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## § 17.4

of intestate death without heirs, setting forth the restricted interests in lands or rents or profits therefrom which have by escheat vested in the tribe which allotted the lands. The Field Solicitor shall mail to each person considered a possible claimant to any portion of the estate, as an heir or devisee or otherwise, a copy of the order with a notice that the order shall become final 30 days after the date of mailing thereof unless within that period the officer by whom the order was signed shall have received a written request for reconsideration of the order. After final action on any order has been taken by the Field Solicitor, the Bureau shall cause a certified copy thereof to be filed in the land records of each county within which are located any escheated lands described therein and shall cause the tribe to be credited with any funds in said estate which arose from rents or profits from such lands, unless a timely appeal therefrom has been filed in accordance with part 2 of this title.

### PART 17—ACTION ON WILLS OF OSAGE INDIANS

#### Sec.

- 17.1 Definitions.
- 17.2 Attorneys.
- 17.3 Pleadings, notice and hearings.
- 17.4 Service on interested parties.
- 17.5 Minors represented at hearings.
- 17.6 Examination of witness.
- 17.7 Limiting number of witnesses.
- 17.8 Supplemental hearing.
- 17.9 Briefs.
- 17.10 Record.
- 17.11 Inspection of wills and approval as to form during testator's lifetime.
- 17.12 Approval.
- 17.13 Government employees as beneficiaries.
- 17.14 Appeals.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10530, Dec. 24, 1957, unless otherwise noted.

#### § 17.1 Definitions.

When used in the regulations in this part the following words or terms shall have the meaning shown below:

(a) *Secretary* means the Secretary of the Interior.

(b) *Commissioner* means the Commissioner of Indian Affairs.

(c) *Superintendent* means the superintendent of the Osage Indian Agency.

(d) *Special attorney* means the special attorney for Osage Indians, or other legal officer designated by the Commissioner.

#### § 17.2 Attorneys.

Interested parties may appear in person or by attorneys at law. Attorneys must file written authority to appear for their clients in the proceedings.

#### § 17.3 Pleadings, notice and hearings.

(a) The petition for approval of the will of a deceased Osage Indian may be set down for hearing at a date not less than 30 days from the date the petition is filed. Hearings shall be conducted only after notice of the time and place of such hearings shall have been given by mail. The notice shall be mailed not less than 10 days preceding the date of the hearing and shall state that the special attorney will, at the time and place specified therein, take testimony to determine whether the will of the deceased Osage Indian shall be approved or disapproved. The notice shall list the presumptive heirs of the decedent and the beneficiaries under such will, and shall notify the attesting witnesses to be present and testify. It shall state that all persons interested in the estate of the decedent may be present at the hearing. The notice shall further state that the special attorney may, in his discretion, continue the hearing to another time or place to be announced at the original hearing.

(b) Any interested party desiring to contest approval of the will may, not less than 5 days before the date set for hearing, file written objections in triplicate, showing that a copy thereof was served upon attorneys for the proponent and other attorneys of record in the case. Such contestant shall clearly state the interest he takes under the will and, if a presumptive heir, the interest he would take under the Oklahoma law. The contestant shall further state specifically the ground on which his contest is based.

#### § 17.4 Service on interested parties.

A copy of the notice of hearing shall be served by mail, at his last known place of residence, on each presumptive

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heir; each beneficiary under the will offered for consideration; and each attesting witness thereto. Such notice must be mailed not less than 10 days preceding the date set for the hearing.

### § 17.5 Minors represented at hearings.

Minor heirs at law, who by the terms of the will are devised a lesser interest in the estate than they would take by descent, of whose interests are challenged, shall, with the approval of the special attorney, be represented at the hearing by guardians ad litem. Such minors 14 years of age or over may indicate in writing their choice of guardians ad litem. If no such choice has been indicated on the date of the hearing, the special attorney shall make the selection and appointment.

### § 17.6 Examination of witness.

All testimony taken at the hearing shall be reduced to writing. Any interested party may cross-examine any witness. Attorneys and others will be required to adhere to the rules of evidence of the State of Oklahoma. If, in addition to oral testimony, affidavits or dispositions are introduced, they must be read, and any opposing claimant may require the presence of the affiant, if practicable, either at that or a subsequent hearing, and opportunity shall be given for cross-examination or for having counter interrogatories answered.

### § 17.7 Limiting number of witnesses.

When the evidence seems clear and conclusive, the special attorney may, in his discretion, limit the number of witnesses to be examined formally upon any matter.

### § 17.8 Supplemental hearing.

When it appears that a supplemental hearing is necessary to secure material evidence, such a hearing may be conducted after notice has been given to those persons on whom notice of the original hearing was served and to such other persons as the testimony taken at the original hearing indicates may have a possible interest in the estate.

### § 17.9 Briefs.

When there are two or more parties with conflicting interests, the party

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upon whom the burden of proof may fall may be allowed a reasonable time, not to exceed 30 days following the conclusion of the hearing, in which to file a brief or other statement of his contentions, showing service on opposing counsel or litigant. The latter shall then be allowed not to exceed 20 days in which to file an answer brief or statement, and his opponent shall have 10 days thereafter to file a reply brief or statement. Upon proper showing the special attorney may grant extensions of time. Each brief or statement shall be filed in duplicate.

### § 17.10 Record.

After the hearing or hearings on the will have been terminated the special attorney shall make up the record and transmit it with his recommendation to the superintendent. The record shall contain:

- (a) Copy of notices mailed to the attesting witnesses and the interested parties.
- (b) Proof of mailing of notices.
- (c) The evidence received at the hearing or hearings.
- (d) The original of the will or wills considered at the hearings.
- (e) A copy of all the pleadings.

The record, except the original will, shall be a part of the permanent files of the Osage Agency.

### § 17.11 Inspection of wills and approval as to form during testator's lifetime.

When a will has been executed and filed with the superintendent during the lifetime of the testator, the will shall be considered by the special attorney who may endorse on such will "approved as to form." A will shall be held in absolute confidence and its contents shall not be divulged prior to the death of the testator.

### § 17.12 Approval.

After hearings have been concluded in conformity with this part the superintendent shall approve or disapprove the wills of deceased Osage Indians.

### § 17.13 Government employees as beneficiaries.

In considering the will of a deceased Osage Indian the superintendent may

disapprove any will which names as a beneficiary thereunder a government employee who is not related to the testator by blood, or otherwise the natural object of the testator's bounty.

#### § 17.14 Appeals.

(a) Notwithstanding the provisions in part 2 of this chapter concerning appeals generally from administrative actions, any appeal from the action of the superintendent of approving or disapproving a will shall be taken to the Secretary. Upon the superintendent's final action of approval or disapproval of a will, he shall immediately notify by mail all attorneys appearing in the case, together with interested parties who are not represented by attorneys, of his decision and of their right to file an appeal.

(b) Any party desiring to appeal from the action of the superintendent shall, within 15 days after the date of the mailing of notice of the decision file with the superintendent a notice in writing of his intention to appeal to the Secretary, and shall, within 30 days after the mailing date of such notice by the superintendent, perfect his appeal to the Secretary by service of the appeal upon the superintendent who will transmit the entire record to the Secretary. If no notice of intention to appeal is given within 15 days, the superintendent's decision will be final.

(c) Upon the filing of notice with the superintendent of intention to appeal or the perfecting of an appeal by service upon the superintendent, at the same time similar notice and service shall be effected by the party taking an appeal upon opposing counsel or litigants, and a statement included in the appeal that this has been done. A party taking an appeal may, within the same 30-day period allowed for perfecting an appeal, file a brief or other written statement of his contentions, showing also service of that brief upon opposing counsel or litigants. Opposing counsel or litigants shall have 30 days from the date of the service of appellant's brief upon them in which to file an answer brief, copies of which also shall be served upon the appellant or opposing counsel and litigants. Except by special

permission, no other briefs will be allowed on appeal.

[26 FR 10930, Nov. 22, 1961]

## PART 18—TRIBAL PROBATE CODES

### Subpart A—General Provisions

Sec.

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

### Subpart B—Approval of Tribal Probate Codes

- 18.101 May a tribe create and adopt its own tribal probate code?
- 18.102 When must a tribe submit its tribal probate code to the Department for approval?
- 18.103 Which provisions within a tribal probate code require the Department's approval?
- 18.104 May a tribe include provisions in its tribal probate code regarding the descent and distribution of trust personalty?
- 18.105 How does a tribe request approval for a tribal probate code?
- 18.106 What will the Department consider in the approval process?
- 18.107 When will the Department approve or disapprove a tribal probate code?
- 18.108 What happens if the Department approves the tribal probate code?
- 18.109 How will a tribe be notified of the disapproval of a tribal probate code?
- 18.110 When will a tribal probate code become effective?
- 18.111 What will happen if a tribe repeals its probate code?
- 18.112 May a tribe appeal the approval or disapproval of a probate code?

### Subpart C—Approval of Tribal Probate Code Amendments

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

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### Subpart D—Approval of Single Heir Rule

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

### Subpart E—Information and Records

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

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

SOURCE: 73 FR 67283, Nov. 13, 2008, unless otherwise noted.

### Subpart A—General Provisions

#### § 18.1 What is the purpose of this part?

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

#### § 18.2 What definitions do I need to know?

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

*Day* means a calendar day.

*Decedent* means a person who is deceased.

*Department* means the Department of the Interior.

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

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

*Indian* means, for the purposes of the Act:

(1) Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any feder-

ally recognized Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

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

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

*Intestate* means that the decedent died without a will.

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

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

*Testator* means a person who has executed a will.

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

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

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

### Subpart B—Approval of Tribal Probate Codes

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

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

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

The tribe must submit its probate code to the Department for approval if

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the tribal probate code contains provisions regarding the descent and distribution of trust and restricted lands.

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

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

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

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

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

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

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

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

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

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

- (1) Prevent further fractionation;
- (2) Consolidate fractional interests into useable parcels;
- (3) Consolidate fractional interests to enhance tribal sovereignty;
- (4) Promote tribal self-sufficiency and self-determination; and
- (5) Reverse the effects of the allotment policy on Indian tribes.

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

- (1) An Indian lineal descendant of the original allottee; or
- (2) An Indian who is not a member of the Indian tribe with jurisdiction over the interest in the land.

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

(1) Allow those devisees to renounce their interests in favor of eligible devisees as defined by the tribal probate code;

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

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

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

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

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

(1) Is consistent with Federal law; and

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

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

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

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

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

### **§ 18.110 When will a tribal probate code become effective?**

(a) A tribal probate code may not become effective sooner than 180 days

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after the date of approval by the Department.

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

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

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

If a tribe repeals its tribal probate code:

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

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

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

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

## Subpart C—Approval of Tribal Probate Code Amendments

### § 18.201 May a tribe amend a tribal probate code?

Yes. A tribe may amend a tribal probate code.

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

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

### § 18.203 Which probate code amendments require approval?

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

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### § 18.204 When will the Department approve an amendment?

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

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

(1) Is consistent with Federal law; and

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

### § 18.205 What happens if the Department approves the amendment?

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

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

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

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

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

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

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

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

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

**Subpart D—Approval of Single Heir Rule**

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

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

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

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

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

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

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

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

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

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

**§ 18.306 When does the single heir rule become effective?**

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

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

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

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

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

**Subpart E—Information and Records**

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

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