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§ 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

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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.

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§ 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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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

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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