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25 CFR Parts 15, 18, 150, et al.

43 CFR Parts 4 and 30

Indian Trust Management Reform; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 15, 18, 150, 152, and 179

Office of the Secretary

43 CFR Parts 4 and 30

RIN 1076–AE59

Indian Trust Management Reform

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

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) and the Office of the Secretary propose to amend several of their regulations related to Indian trust management to further fulfill the Secretary's fiduciary responsibilities to federally recognized tribes and individual Indians and to meet the Indian trust management policies articulated by Congress in the Indian Land Consolidation Act (ILCA), as amended by the American Indian Probate Reform Act of 2004 (AIPRA). These amendments address Indian trust management issues in the areas of probate, probate hearings and appeals, tribal probate codes, life estates and future interests in Indian land, the Indian land title of record; and conveyances of trust or restricted land. There is also an ''Application for Consolidation by Sale'' form that is associated with one of these amendments.

DATES: Please submit your comments by October 10, 2006.

ADDRESSES: You may submit comments, identified by the number 1076–AE59, by any of the following methods:

—Federal rulemaking portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

—Web site at *http://www.doitrustregs.com.*

—E-mail: *Michele_F_Singer@ios.doi.gov.* Include the number 1076–AE59 in the subject line of the message.

—Fax: (202) 208–5320. Include the number 1076–AE59 in the subject line of the message.

—Mail: U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 4141, Washington, DC 20240

—Hand delivery: Michele Singer, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

Comments on the information collection burdens, including comments on or requests for copies of the ''Application for Consolidation by Sale'' form, are separate from those on the substance of the rule. Send comments on the information collection burdens to: Interior Desk Officer 1076–AE59, Office of Management and Budget, e-mail: *oira_docket@omb.eop.gov;* or 202/395–6566 (fax). Please also send a copy of your comments to BIA at the location specified under the heading **ADDRESSES**.

FOR FURTHER INFORMATION CONTACT: Michele Singer, Counselor to the Assistant Secretary—Indian Affairs, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW., Mail Stop 4141, Washington, DC 20240, telephone (202) 273–4680.

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I. Statutory Authority

Regulatory amendments to these parts are proposed under the general authority of the Trust Fund Management Reform Act of 1994, 25 U.S.C. 4021 *et seq.*, and the Indian Land Consolidation Act of 2000 (ILCA) as amended by the American Indian Probate Reform Act of 2004 (AIPRA), 25 U.S.C. 2201 *et seq.* The following table provides additional statutory authority specific to each CFR part.

25 CFR part 15	5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410; 44 U.S.C. 3101 *et seq.*
25 CFR part 18	5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410; 44 U.S.C. 3101 *et seq.*; Pub. L. 108–374 (American Indian Probate Reform Act of 2004).
NEW-Tribal Probate Codes	
25 CFR part 150	Act of June 30, 1834 (4 Stat. 738; 25 U.S.C. 9). Act of July 26, 1892 (27 Stat. 272; 25 U.S.C. 5). Reorganization Plan No. 3 of 1950 approved June 20, 1949 (64 Stat. 1262). (Act of April 26, 1906 (34 Stat. 137); Act of May 27, 1908 (35 Stat. 312); Act of August 1, 1914 (38 Stat. 582, 598) deals specifically with land records of the Five Civilized Tribes. Act of February 14, 1920 (41 Stat. 415) amended March 1, 1933 (47 Stat. 1417; 25 U.S.C. 413); 5 U.S.C. 552a; and 31 U.S.C. 9701.
25 CFR part 152	R.S. 161; 5 U.S.C. 301. Interpret or apply sec. 7, 32 Stat. 275, 34 Stat. 1018, sec. 1, 35 Stat. 444, sec. 1 and 2, 36 Stat. 855, as amended, 856, as amended, sec. 17, 39 Stat. 127, 40 Stat. 579, 62 Stat. 236, sec. 2, 40 Stat. 606, 68 Stat. 358, 69 Stat. 666: 25 U.S.C. 378, 379, 405, 404, 372, 373, 483, 355, unless otherwise noted.
25 CFR part 179	86 Stat. 530; 86 Stat. 744; 94 Stat. 537; 96 Stat. 2515; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201–11; Pub. L. 108–374 (American Indian Probate Reform Act of 2004).
43 CFR part 4	5 U.S.C. 301; 43 U.S.C. 1201.
43 CFR part 30	5 U.S.C. 301; 43 U.S.C. 1201.
NEW—Probate Hearing Procedures.	

II. Background

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

A. History of the Rule

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

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

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

From members of this Joint Task Force, a subcommittee of both tribal representatives and Department representatives was formed. The subcommittee met regularly to review the ''As-Is'' processes of the way major trust functions were performed at that time. From this ''As-Is'' model, the subcommittee identified business goals and objectives the Department should meet in fulfilling its trust responsibilities and providing improved services to trust beneficiaries. It then developed the overall strategy to meet those goals and objectives, documented as the Comprehensive Trust Management (CTM) plan.

The CTM laid the groundwork for trust reform by providing strategic direction for development of the ''To-Be'' model, known as the Fiduciary Trust Model (FTM). The FTM redesigns trust processes into more efficient, consistent, integrated, and fiscally responsible business processes. In developing the FTM, the team incorporated years of Departmental consultation with tribes. The Department adopted the FTM in December 2004 to guide trust reform. Together with Indian affairs policies, the FTM forms the basis of today's rulemaking.

B. The Need for This Proposed Rulemaking

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

Additionally, Congress enacted the American Indian Probate Reform Act of 2004. AIPRA amends ILCA to better meet the trust reform goals for land consolidation articulated in ILCA. Regulatory changes authorized by AIPRA are included in this proposed rule.

C. Development of Proposed Regulatory Language

This proposed rulemaking encompasses tribal and Departmental representatives' efforts on the Joint Task Force, as well as the efforts of tribal representatives who have provided comments throughout the trust reform process. These efforts guided in-house teams in drafting the specific regulatory language included in this proposed rulemaking. The in-house teams consisted of Federal personnel from Department headquarters and the field, and included program officers and Department attorneys possessing extensive expertise in probate, land titles and records, acquisition and conveyance, leasing and grazing, and administrative appeals. On December 27, 2005, the Department shared advance copies of the proposed regulatory language (identified as ''preliminary drafts'' throughout this preamble) with leaders of each Federally recognized tribal government, as well as additional contacts in Indian country, for their input and recommendations. The Department has also presented the preliminary drafts and obtained the input of tribes at two formal consultation meetings: one in Albuquerque, New Mexico on February 14–15, 2006, and one in Portland, Oregon on March 29, 2006. Comments received during these consultations and in the time leading up to this publication have identified several issues that the Department considered in revising the preliminary drafts for publication as a proposed rule. In accordance with the government-to-government relationship with tribes, formal consultations are also being scheduled to take place during the comment period that follows this publication in the **Federal Register** to facilitate an informed final rule. See Section IV, Public Comments, for details on upcoming consultations.

D. Status of Other Indian Trust Management Reform Regulations

The Department is also developing regulatory amendments to land acquisitions (25 CFR part 151), leasing (25 CFR part 162), and grazing (25 CFR part 166), and developing draft regulatory language addressing trust fund accounting and appeals (new CFR part), unclaimed moneys/whereabouts unknown (new CFR part), and fees for service (new CFR part). Based on input received during the February 14–15, 2006, Albuquerque tribal consultation session, the Department has determined that these regulations require additional work before publication as a proposed rule. The Department plans to promulgate these additional regulations at some point in the future. Together, these regulatory changes will provide the Department with the tools it needs to better serve beneficiaries and will standardize procedures for consistent

execution of fiduciary responsibilities across BIA Regions.

III. Overview of Proposed Rule

The proposed rule amends various parts of the CFR to further implement Indian trust management reform and meet the policies expressed by Congress in ILCA, as amended by AIPRA. Together, these amendments form an integrated approach to Indian trust management related to probate, land records and title documents, and conveyances that allow the Department to better meet the needs of its beneficiaries.

The Department has revised many of these regulations, in accordance with the Plain Language Initiative (63 FR 31885 (June 10, 1998)) to facilitate ease of use and public comprehension.

In addition to making plain language revisions, amendments revise the regulations to:

• *Incorporate AIPRA changes to probate:* AIPRA created a uniform probate code to standardize intestate succession rules for trust and restricted property. The uniform probate code reinforces tribal sovereignty by eliminating the application of state laws in the probate of trust and restricted assets while deferring to approved tribal probate codes. AIPRA also established new mechanisms for consolidating fractionated interests at probate and through sale of highly fractionated tracts. The proposed amendments to probate regulations would implement AIPRA's provisions by requiring the additional information needed to determine heirs and devisees to be included in the probate file, and by establishing the procedures for directional disclaimers, purchases at probate and consolidation agreements. These regulations continue to refer all probate cases to OHA. The amendments streamline the OHA process by shortening deadlines to more reasonable time periods. Amendments to life estate provisions reflect AIPRA's change in the valuation of a life estate to be ''without regard to waste'' and base the valuation on the four-year average Single Life Factor used by the U.S. Internal Revenue Service in Table S of the 7520 rate schedule, without regard to gender.

• *Promote consolidation (reduce fractionation) of interests:* Allotments owned by Indians have become increasingly fractionated with the probate of each generation, resulting in the division of the allotment into smaller and smaller interests. These amendments meet the policy expressed by Congress to reduce fractionation (*i.e.*, the exponential increase in the number of ownership interests in a given parcel of land) of tribal and individual Indian interests in trust and restricted property through the use of several tools. These tools include the opportunities for tribes to establish a tribal land consolidation plan; purchase interests in land within their respective jurisdictions when offered for negotiated sale, gift, or exchange; make a tribal tract purchase (*i.e.*, obtain fractionated interests of non-consenting trust and restricted owners under certain circumstances); and unify ownership and consolidate interests in a tract through partition. The amendments allow both tribes and individual Indians to obtain highly fractionated interests through a new mechanism, created by AIPRA: consolidation by sale (called ''partition of highly fractionated lands'' in AIPRA). Additionally, the new AIPRA mechanisms being incorporated in probate regulations will offer opportunities to reduce fractionation through the distribution of probate property.

• *Improve service to beneficiaries:* Amendments to the Land Titles and Records Office (LTRO) regulations will update and standardize LTRO title practices and recordation to ensure the Secretary is able to accurately track and record accounting of trust and restricted interest owners, allowing the Secretary to better serve the beneficiaries. Amendments to the probate process are aimed at facilitating the process to reduce the probate backlog and better serve beneficiaries. By clarifying the requirements and processes for probate, approval of tribal probate codes, obtaining LTRO services and products, and conveying trust and restricted property, the Department improves communication and transparency, allowing better service to beneficiaries.

The Department is committed to fully explaining both the purpose and intended effects of these regulations in this preamble. More detailed explanations of each part are provided below, followed by summaries of comments received during tribal consultations on the preliminary drafts of these regulations. The Department welcomes any questions or comments requesting clarification of these parts, as well as additional comments. Additionally, upon finalization of any of these regulations, the Department plans to develop training and other explanatory materials, where appropriate, to facilitate transparency in implementation of these regulations.

IV. Part-by-Part Analysis

The following sections provide a description of the amendments with respect to each CFR part and provide distribution tables listing what current CFR sections are proposed for change, the new (*i.e.*, proposed) CFR section, and a description of the proposed changes. Because this proposed rule incorporates changes made to the preliminary drafts, which were distributed to tribes in December 2005, the following part-by-part analysis includes a discussion of major changes made to each preliminary draft of the CFR part in response to comments.

A. 25 CFR Part 15

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

Amendments to this part revise several subsections to ensure that the probate file delivered to OHA for adjudication is as complete as possible. By requiring a certification by BIA that they have examined certain sources of information and that the file is as complete as possible based on those sources of information, the amendments will prevent multiple transfers of the probate file between BIA and OHA, facilitating the process. Additional changes to the records requirements, such as deleting the requirement for a birth certificate, are also intended to facilitate the probate process.

The amendments ensure that information is included in the probate file to determine whether heirs and devisees meet the AIPRA definition of ''Indian.'' The amendments also incorporate definitions regarding AIPRA's new methods for consolidating interests at probate:

• Consolidation agreements, which are agreements by the decedent's heirs and devisees to consolidate their inherited/devised interests in trust and restricted land or consolidate their inherited/devised interests in land with other interests they already own in trust and restricted land; and

• Purchase options at probate, which allow eligible purchasers to purchase or exchange a decedent's interest in trust or restricted land.

Amendments to this part ensure that the probate file contains information necessary for implementation of statutory solutions to fractionation set out in 43 CFR part 4, which addresses OHA probate hearings. Part 15 prescribes what must be included in a probate package and how it will be compiled.

Changes From Preliminary Draft

Several tribal commenters questioned why 25 CFR part 15 and 43 CFR part 4, which both address the probate process, are in separate CFR titles. The Department has determined that because these two parts address different agencies—25 CFR part 15 addresses BIA preparation of the probate file, and 43 CFR part 4 addresses adjudication of the probate file once OHA receives it from BIA—these parts are best kept in their respective titles.

Several commenters suggested that the definitions in both 25 CFR part 15 and 43 CFR part 4 should track the definitions as set out in ILCA, as amended by AIPRA. The Department has reviewed the regulatory definitions, and amended them as appropriate to ensure that they are consistent with AIPRA and with 43 CFR parts 4, 30.

The Department examined and changed terms, as appropriate, to ensure consistency with definition of terms in 43 CFR parts 4, 30. The Department also amended other terminology as a result of issues raised by tribal commenters: for example, it changed ''trust financial assets'' and ''cash assets'' to ''trust personalty'' to encompass both cash and securities, and it changed ''beneficiaries'' to ''devisees,'' which is a more precise term including only those who receive under a will. In section 15.8, the Department clarified what is meant by a ''self-proved will.''

In response to tribal comments, the Department also significantly amended section 15.14. In the preliminary draft, this section had provided that, pending probate, the Secretary could take custody and control of the estate and take any action he or she determined to be necessary for the benefit of the estate, including sale of the land. The version of this section being proposed today instead provides limited emergency actions that BIA may take when assets in an estate may be significantly diminished or destroyed while the probate is pending. Each of the emergency actions require a request to or hearing before OHA, so no unilateral action may be taken to sell land pending probate under this provision.

At least one tribal commenter objected to the last provision in section 15.106 of the preliminary draft, allowing the Secretary to request any additional information in support of the probate file. The Department has deleted the provision allowing the Secretary to require additional information in support of the probate file.

The Department also clarified when claims against an estate may be filed and the deadline for filing such claims in section 15.202.

Distribution Table—25 CFR Part 15

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

Current citation	New citation	Title	Remarks
15.1	15.1	What is the purpose of this part?	No change.
15.2	15.2	What terms do I need to know?	Additional definitions.
	15.3	Who can make a will disposing of trust or restricted land or trust personalty?	New section.
	15.4	What are the requirements for my will?	New section.
	15.5	Can I revoke my will?	New section.
	15.6	Can my will be deemed revoked by the operation of the law of any state?	New section.
	15.7	What is a self-proved will?	New section.
	15.8	Can I make my will, codicil, or revocation self-proved?	New section.
	15.9	Do affidavits for my self-proved will, codicil, or revocation have to be in a certain format?	New section.
15.3	15.10	Will the Secretary probate all the land or assets in an estate?	Clarifies that the Secretary will probate only the trust or restricted property in an estate.
15.4	15.11	How does the probate process work?	Administrative changes.
	15.12	What happens if assets in a trust estate may be diminished or destroyed while the probate is pending?	New section.
15.101	15.103	How do I begin the probate process?	Clarifies whom to contact at BIA to inform of a death.
	15.104	Does BIA need a death certificate to prepare a probate file?	Clarifies that a death certificate should be provided and lists information and documents that must be provided if no death certificate is available.
15.102	15.102	Who may notify BIA of a death?	Plain language.
15.103	15.101	When should I notify BIA of a death?	Plain language.
15.104, 15.105	15.105	What other documents does BIA need to prepare a probate file?	Clarifies that certain documents may come from an authority other than a court. Adds requirement for: orders requiring payment of spousal support; identification of person or entity in whose favor an interest is renounced; court judgments regarding creditor claims; and place of enrollment and tribal enrollment or census number of the decedent and potential heirs and beneficiaries. Deletes requirement for birth certificate.
15.106	15.201	Can I get funds from the decedent's IIM account for funeral services?	Plain language.
15.107	15.107	Who prepares a probate file?	Incorporates new ''probate staff'' definition.
15.108	15.108	If the decedent was not an enrolled member of a tribe or was a member of more than one tribe, who prepares the probate file?	Redesignated. Plain language.

Current citation	New citation	Title	Remarks
	15.106	Can a probate case be opened when an owner of an interest has been absent?	New section.
15.201	15.301	What will BIA do with the documents that I provide?	Clarifies that BIA will also examine other documents and information (beyond those provided) to prepare a complete probate file and will transfer the probate file to OHA.
15.202	15.202	If the decedent owed me money, how do I file a claim against the estate?	Adds requirements to provide certain additional information in support of claim. Changes deadline for filing a claim to the conclusion of the first hearing rather than 60 days of verification of death.
15.203	15.302	What items must BIA include in the probate file?	Clarifies what the certified inventory of trust or restricted real property should contain. Adds requirements for supporting documents.
	15.303	When is a probate file complete?	New section.
15.301	15.401	What happens after BIA prepares the probate file?	Redesignated. Deletes notification to interested parties.
15.302	15.402	What happens after the probate file is referred to OHA?	Adds provisions describing how BIA will handle claims it receives after it refers the probate file to OHA.
15.303	15.403	What happens after the probate decision is made?	Establishes a 30-day time period to file a written request for de novo review, a request for rehearing with the OHA deciding official, or an appeal. Establishes that BIA will not pay claims, transfer title, or distribute assets pending a de novo review, rehearing, or appeal.
15.401	15.501	How can I find out the status of a probate?	Clarifies that interested parties may contact the BIA agency or regional office.
15.402	15.502	Who owns the records associated with this part?	Clarifies that records made by or on behalf of the United States are owned by the United States.
15.403	15.503	How must records associated with this part be preserved?	Redesignated. Plain language.
	15.504	Who may inspect these records?	Redesignated. Plain language.
	15.505	What information must tribes provide BIA to complete the probate file?	Establishes that tribes must provide certain information when necessary to complete a probate file.
	15.506	How does the Paperwork Reduction Act affect this part?	New section.

B. 25 CFR Part 18 [NEW]—Tribal Probate Codes

This new CFR part addresses the process for obtaining Secretarial approval of a tribal probate code and lists factors the Secretary will consider in reviewing the tribal probate code for approval. While tribes have had the authority to adopt their own tribal probate codes governing descent and distribution of trust and restricted lands located within the tribes' respective reservations or otherwise subject to the tribes' jurisdiction, part 18 clarifies that a tribe must obtain Secretarial approval of the code. This part lists the factors the Secretary will consider in reviewing a tribal probate code and establishes when an approved code, repeal, or amendment becomes effective. Upon approval, this part requires the tribe to notify tribal members of the tribal probate code.

Changes From Preliminary Draft

The Department made several plain language changes to the preliminary draft, which has resulted in combining certain sections and rearranging the sections to some degree. The Department added a new subsection (b) to section 18.1 to clarify that a tribal probate code may provide for a single heir rule that differs from the one provided in AIPRA.

The Department also clarified section 18.8(b) (section 18.9 in the preliminary draft) to provide that a tribal probate code or amendment will be applied to the estates of decedents who die on or after the effective date, rather than the date of approval, of the tribal probate code or amendment.

Finally, tribal commenters objected to section 18.12 of the preliminary draft, which provided how tribes should notify their members of a tribal probate code or amendment, as an inappropriate incursion into tribal sovereignty. The Department has deleted this section in its entirety.

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

C. 25 CFR Part 150—Indian Land Record of Title

The LTRO determines, maintains, and certifies the title status of Indian land and provides various land title products and services to individual Indians, tribes, and other members of the public for land held in trust or restricted status by the United States. Trust status means that title is held by the United States in trust for the benefit of an individual Indian or tribe. Restricted status means ownership of the property is subject to Federal restrictions against alienation and/or encumbrance.

The proposed rule replaces 25 CFR part 150, Land Records and Title Documents, in its entirety, to provide clarification of LTRO's procedures and increase the ability of the LTRO to provide services and products to Indians, tribes, and the public comparable to those provided by state and local land records offices. The changes are described subpart by subpart, below.

Subpart A of the proposed rule, Purpose, Definitions, and Public Information, clarifies that the

Department will provide access to the information in the Indian Land Record of Title to individual Indians, tribes, and the public, except in those instances where access would violate law or policy restricting access to such records. The definition of ''Indian land'' is clarified to include only lands in trust or restricted status and Federal government-owned land that is under the jurisdiction of the BIA, and not land held in fee by Indians or fee land subject to the rights, occupancy, and use of Indians.

Subpart B of the proposed rule, The Indian Land Record of Title Designation as the Official Record of Indian Land, designates the Indian Land Record of Title as the official record of title instruments affecting Indian land. The proposed rule clarifies that constructive notice of the existence of the title instrument is provided by recording the instrument in the Indian Land Record of Title. Recording instruments with other Federal or state offices does not provide constructive notice with regard to Indian land.

Subpart C of the proposed rule, LTRO Procedures and Requirements to Record Instruments in the Indian Land Record of Title, designates the LTRO as the organization within the Federal government that has the responsibility to maintain the Indian Land Record of Title. This subpart describes the LTRO process for receiving and recording title and the process for correcting an error or omission in an LTRO product or service.

Subpart D of the proposed rule, Services and Products of the LTRO, describes the types of services and products offered by the LTRO. Subpart D also proposes charging fees to certain parties for the services and products provided by LTRO. The proposed fees implement the authority contained in 25 U.S.C. 413 and address a Congressional directive, in 31 U.S.C. 9701, for agencies to begin charging fees that are fair and reasonable based upon the value of the service provided by the Federal office. Under 25 U.S.C. 14b, the Secretary may order that such funds be directed to the appropriation account for the LTRO. A fee schedule will be published as a notice separate from this proposed rule. The proposed rule specifies exceptions to the fee.

These proposed provisions will provide a greater benefit to individual Indians, tribes, and the public through clarification of LTRO procedures and will improve LTRO's ability to serve beneficiaries.

Changes From Preliminary Draft

Since distribution of the preliminary draft, the Department made several changes to part 150. For example, the Department added cross-references to 43 CFR part 30 in proposed sections 150.206 and 150.207, relating to corrections of final probate records. The proposed part 150 also moves two sections regarding how to notify the LTRO of an error or omission in a service or product from subpart D to subpart C, for clarity. (See proposed section 150.208). The Department deleted the section in the preliminary draft, ''What certified products does the LTRO produce,'' and added the section, ''What services and products may I order from the LTRO.'' Additional changes and issues are discussed below.

Terminology: The Department added language to clarify several definitions, including ''interest,'' ''Land Titles and Records Office,'' ''title,'' and ''title instrument.'' The Department also rewrote the definition for ''tribe'' to be consistent with existing regulatory definitions for this term.

Throughout the rule, the Department has modified the terminology to clarify that the rights of the individual beneficiary and tribe relate to an interest in trust (see also 25 CFR part 179).

Effect on Tribes that Compact or Contract LTRO Functions: Several tribal commenters requested clarification on how this rule affects tribes that perform LTRO functions under a contract or compact. Records maintained by tribes under such a contract or compact are part of the Indian Land Record of Title and must be maintained under the same standards and policies. As such, the regulation includes compact and contract tribes under the definition of the ''Land Titles and Records Office'' for grammatical and textual convenience purposes. The inclusion of compact and contract tribes under this definition is not intended to reflect a limitation on the sovereignty of these tribes. Certain functions performed by the LTRO are inherently Federal functions and can only be performed by a government agency. The inclusion of the compact and contract tribes in this definition is not intended to authorize any such tribe to perform any inherently Federal function.

Access to the Indian Land Record of Title: Several Indian commenters raised the issue of access to LTRO information. Specifically, these commenters pointed out that they are being denied access to LTRO information, sometimes under the auspices of the Privacy Act. The rule clarifies that the Indian Land Record of Title is a public record but that access is subject to the Privacy Act, Freedom of Information Act, and other law or policy restricting access. In some instances, portions of a copy of the title instruments must be redacted under the Privacy Act to eliminate personal information not otherwise included in the Indian Land Record of Title. Additionally, the Department may restrict access to reports prepared for the Secretary. The LTRO performs functions other than entering information into the Indian Land Record of Title and providing copies of maps and title instruments—the LTRO also takes the information from the record, reviews and examines and draws conclusions about it in preparation of a report. Where the LTRO prepares a report for the benefit of the Secretary, the Secretary has the discretion to restrict access to the report. For example, the public may not obtain a copy of the Probate Inventory Report until OHA opens the probate case. While access to the Indian Land Record of Title may be restricted by the Freedom of Information Act, Privacy Act, or other law or policy, the Department believes that in most cases, neither law or policy will restrict access to these records by individual Indians or tribes. Generally, information included in the Indian Land Record of Title will be available to the public without restriction. The Department has also clarified that owners of an interest in trust or restricted land within the same reservation, the tribe or any person that is leasing, using, or consolidating, or is applying to lease, use, or consolidate, such trust or restricted land or the interest in trust or restricted lands may obtain the following information without regard to the Privacy Act and any exemption contained in the Freedom of Information Act: The names, mailing addresses, information on the location of the parcel, and percentage of the parcel owned by each individual.

Who Approves Title Instruments: The Department has deleted as unnecessary the section regarding who the Federal officials are that approve title instruments.

Fees: Based on input received on the preliminary drafts, the Department recognizes that there is strong opposition to requiring Indians and tribes to pay for LTRO services and products. Several tribal commenters also expressed a preference for charging fees exclusively to non-Indians because they believe that providing LTRO products and services to non-Indians without charge burdens the LTRO and diverts monies from other Indian and tribal programs. The Department welcomes continued feedback on the

proposal for charging fees for LTRO products and services. The Department will continue to review ways to maximize the efficiency and effectiveness of the products and services provided by the LTRO and consider whether charging fees can assist with this effort. The Department has removed the fee schedule from the text of the regulation and will publish it in a separate notice. This will allow the Department to revise the fees without having to amend the rule.

LTRO Response Time: During tribal consultations, several tribal commenters expressed their frustration at what they characterized as the slowness of the LTRO in responding to requests to provide services and products. The Department is currently undergoing implementation of a technological system that will provide a centralized database of the Indian Land Record of Title. It is the Department's belief that this system will increase the LTRO's ability to respond to requests for products and services in a more timely manner. Several tribal commenters suggested imposing timelines on the LTRO to respond to requests. Due to the complexity and variety of title instruments and reports generated from the information in the Indian Land Record of Title, the Department is unable to establish a baseline time period. Additionally, the Department believes that establishing time frames within this regulation would limit the flexibility to amend those time frames to reflect changes in processes.

Distribution Table—25 CFR Part 150

The following distribution table indicates where each of the current regulatory sections in 25 CFR part 150 is located in the proposed 25 CFR part 150.

Current citation	New citation	Title	Remarks
150.1	150.1	What is the purpose of this part?	Clarifies purpose by expanding on the services and products LTRO provides.
150.2	150.2	What terms do I need to know?	Adds several definitions for clarification.
	150.4	Do I have to be an Indian or a tribe to obtain products or services from the Lands Titles and Records Office?	New section.
	150.101	Must all title instruments affecting Indian land be recorded in the Indian Land Record of Title?	Designates the Indian Land Record of title as the official record of title instruments affecting Indian land. Clarifies that recording with the Indian Land Record of Title serves as constructive notice that the title instrument exists.
	150.102	Do I have to check with any other governmental office to find title instruments to Indian land?	Clarifies that the Indian Record of Land Title is the source of all recorded instruments.
150.3	150.201	Who maintains the Indian Land Record of Title?	Establishes the LTRO as the office responsible for maintaining the Indian Land Record of Title.
150.4	150.202	Where is the LTRO located?	Indicates that the LTRO has locations throughout the United States, and that Bureau offices maintain contact information.
150.5	.....	.....	Deleted.
150.6	150.203	Who submits the title instruments for recording?	Clarifies that BIA and other government offices may submit title documents for recording. Deletes specific reference to the Administrative Law Judge submitting probate documents.
	150.204	What does the LTRO do with the instruments that it receives?	Restates the steps LTRO takes when it receives documents.
	150.205	What are the minimum requirements for recording a title instrument?	Clarifies requirements for recording.
150.7	150.206	What if the LTRO discovers a defect or error in a document?	Specifies LTRO procedures to address defects or errors discovered after recording.
	150.207	What if a defect or error in a final probate record cannot be corrected?.	Restates requirement for LTRO notification to deciding official for non-clerical errors in probate records. Establishes that the corrected document will be filed in the Indian Land Record of Title. Deletes reference to "Superintendent" and Administrative Law Judges.
	150.208	How do I correct an error or omission in a title instrument or LTRO product or service?	New section.
	150.209	What instruments qualify for recording in with the LTRO?	New section.
	150.210	Does the LTRO maintain the original title instruments?	New section.
	150.211	May I obtain a copy of the title instrument from the LTRO?	New section.
	150.301	What services and products may I order from the LTRO?	New section.
150.8	150.302	How do I order services and products from the LTRO?	Discusses how to order any of LTRO's services and products.
	150.303	Does BIA charge fees for any of the services provided by, or products produced by, the LTRO?	New section.
	150.304	What will the LTRO do if the instrument contains information that is privileged or protected?	New section.

Current citation	New citation	Title	Remarks
	150.305	How does the Paperwork Reduction Act affect this part?	New section.
150.9			Deleted.
150.10	150.212	Is there any benefit of obtaining a certified copy of the title?	Restates that a certified copy can be used in place of an original in court or elsewhere.
150.11	150.3	When can I see land and title information from the Indian Land Record of Title?	Clarifies Department policy to allow public access to the Indian Land Record of Title. Deletes provision regarding nondisclosure of monetary consideration and provision.

D. 25 CFR Part 152—Conveyances

This part establishes the authorities, policy, and procedures governing the conveyance of trust or restricted land. Amendments reorganize this part to clarify the different procedures and requirements applicable to each type of conveyance. The reorganized sections incorporate statutory solutions aimed at reducing fractionation of interests. One such solution, consolidation by sale, is newly established by AIPRA. Consolidation by sale allows one or more eligible bidders to consolidate highly fractionated land by buying the highly fractionated interests at fair market value through a sale conducted by the Secretary. The amendments also:

- Provide instances where consent of the trust or restricted co-owner is not required to convey a fractional interest, making it easier to consolidate interests;
- Allow conveyance of land within a tribe's jurisdiction without tribal consent where the grantor owns 100% of the tract;
- Allow tribes to purchase fractional interests of non-consenting trust and restricted owners at fair market value (tribal tract purchases); and
- Clarify that the Secretary will have a lien on income derived from any interest purchased for a tribe under the Indian Land Consolidation program in the amount of the purchase price, until the lien is satisfied or removed by the Secretary.

The reorganization divides this part into various subparts. Proposed subpart A, General Provisions, provides relevant definitions, describes to whom the Secretary will provide ownership information related to conveyance in this part, and establishes the scope of the regulations.

Subpart B, Sales and Exchanges of Tribal Trust or Restricted Land, addresses sales and exchanges of tribal land pursuant to an approved tribal consolidation plan and certain exchanges of tribal land. This subpart describes what a tribal consolidation plan is, how to obtain approval of such a plan, and how to obtain approval of a sale or exchange in the absence of tribal consolidation plan.

Subpart C, Negotiated Sales, Gifts, and Exchanges of Individually Owned Lands, addresses conveyances of individually owned trust or restricted lands. This subpart provides for a tribal option to purchase any trust or restricted interests proposed for sale, gift, or exchange to unrestricted fee status.

Subpart D, Tribal Parcel Purchase, allows tribes to purchase tracts of trust or restricted lands where the tribe either owns at least 50% of the undivided interests in the tract or has obtained the consent of the co-owners of at least 50% of the undivided interests in the tract, subject to the right of an individual owner in possession of the tract to preempt the purchase.

Subpart E, Consolidation by Sale of Highly Fractionated Parcels, incorporates the new consolidation mechanism authorized by AIPRA. Consolidation by sale allows eligible bidders to consolidate interests in highly fractionated parcels where certain consents are obtained. This subpart also provides the procedures for conducting the sale by public auction or sealed bid. There is an ''Application for Consolidation by Sale'' form associated with this subpart. To obtain a copy of the information collection request submission to OMB or a copy of the form, send your request to the address related to information collections listed in **ADDRESSES.**

Subpart F, Partitions in Kind, authorizes the Secretary to subdivide trust and restricted land with multiple owners into smaller tracts in which the interests of the owners are unified or consolidated. This subpart allows any owner of a fractionated interest to apply to the Secretary for partition.

Subpart G, Mortgages and Deeds of Trust, allows the Secretary to approve mortgages or deeds of trust encumbering individually owned land under certain circumstances.

Much of the current regulatory language is redesignated into subpart H, Patents in Fee, Certificates of Competency, and Orders Removing Restrictions, and subpart I, Special Provisions applicable to Osage and the Five Civilized Tribes.

Changes From Preliminary Draft

The Department made several changes to the preliminary draft of 25 CFR part 152. Many of the changes are intended to clarify and make terminology consistent.

Definitions: The Department deleted the definitions for ''competent'' and ''contiguous'' and added definitions for ''fair market value,'' ''family farm,'' and ''owner(s).'' The Department revised the definition for ''Indian.''

Land Consolidation Plans: The preliminary draft had included a section stating that a tribal land consolidation plan may identify for purchase only lands contiguous to the reservation or otherwise subject to tribal jurisdiction. Several tribal commenters objected to the provision stating that the tribal land consolidation plan may identify for purchase only those lands that are located within or contiguous to the tribe's reservation boundaries, or otherwise subject to tribal jurisdiction. One tribal commenter stated that because it does not have fixed exterior reservation boundaries, this provision would prevent it from acquiring other lands which are in the vicinity of its separate trust parcels, but which are not within or contiguous to that tribe's ''reservation boundaries.'' A few tribal commenters stated that this limitation is substantive and is not contained in ILCA section 2203, and therefore should not be imposed by regulation. Another tribal commenter stated that this severely limits the unrestricted fee lands the tribe can purchase. The Department has deleted this restriction. Additionally, the Department has deleted the definition of ''contiguous'' since this deleted provision was the only appearance of the term ''contiguous'' in the regulation.

Several tribal commenters also noted that the tribal land consolidation plan conditions effectively require tribes to pre-identify every transaction to be carried out under the plan—whether for sale, purchase, or exchange. These commenters noted that this requirement

would cause the tribe to submit new plans or plan amendments for every such transaction. These commenters also asserted that this requirement will result in significant price inflation and force tribes to pay more for those targeted tracts than would be the case without the proposed pre-identification requirement. The Department has replaced the requirement for specifically identifying sales, purchases, and exchanges with a requirement that the plan include a description and map of the general area of the sales, purchases, and exchanges.

Several tribal commenters opposed the requirement for approval of a tribal land consolidation plan as an intrusion on tribal sovereignty. Submission of a tribal land consolidation plan is optional and within the tribe's discretion. However, an approved land consolidation plan will allow a tribe to sell parcels of its trust land in connection with an overall plan to consolidate its land holdings and/or decrease fractionation. Pursuant to federal law, sales under an approved consolidation plan may also be at slightly less than fair market value. If the tribe has no plans to sell its trust land, though, there is no need for it to prepare or submit a land consolidation plan for approval.

Finally, the Department clarified the process for sales and exchanges with a land consolidation plan and without a land consolidation plan.

Sales and Exchanges: The Department revised section 152.210 (section 152.211 of the preliminary draft) to clarify that a grantor may waive the right to be notified of fair market value only if the grantee is Indian, among the other criteria. The Department also deleted section 152.212 of the preliminary draft, addressing requirements for appraisals to determine fair market value because the proposed draft instead incorporates the requirements into the new definition of ''fair market value.''

Several tribal commenters questioned the meaning of the provision, ''trust or restricted land may only be conveyed to a grantee in unrestricted fee status, where all of the trust or restricted interests in the tract are being conveyed'' in section 152.205 (section 152.206 of the preliminary draft). The Department has deleted this phrase and clarified that the Indian tribe with jurisdiction will receive notice and has the option to purchase.

The preliminary draft provided that tribal consent for conveyance would be required if a law affecting probate and inheritance rights was in effect. The Department revised this section to clarify that tribal consent of a conveyance is required if the tribe enacted a law requiring consent.

The preliminary draft required the tribe to purchase the fractional interest where it fails to promptly consent to the sale. The Department has removed that provision from the regulation.

Several tribal commenters questioned use of the U.S. Department of Justice (DOJ) title standards. The Department deleted this reference and instead refers generally to Department of the Interior boundary standards.

Several tribal commenters objected to the proposed provision allowing the Secretary to liquidate off-reservation interests and allow a tribe to purchase an on-reservation interest where the transfer creates a different pattern of jurisdiction or aggravates existing jurisdictional conflicts. This commenter stated that this is contrary to the Federal policy of Indian self-determination. Another commenter stated that a distinction should be made between trust interests and restricted interests because tribes have a jurisdictional responsibility upon acquisition of the beneficial interest in trust parcels. The Department has deleted this section.

Tribal Tract Purchases: Two tribal commenters expressed confusion over the provision stating that tribal tract purchase authority does not extend to ''purchases that are limited to any such fractional interests held in unrestricted fee status.'' The Department has deleted this provision and clarified that tribal tract purchases may include conveyances to the tribe of interests held in fee and that fee interests are included in the calculation to determine whether the tribe owns at least 50% of the tract. With regard to providing notice of a tribal tract purchase to owners whose whereabouts are unknown, the Department has lengthened the time before the closing of the sale that publication in a paper can occur from 30 days to 90 days. The Department has also clarified what action it will take if it does not approve the appraisal for a tribal tract purchase.

Consolidation by Sale: Several tribal representatives commented on the fact that an individual holding the largest ownership interest in the tract, and 20% or greater of the ownership interests in the tract, has a right to match the highest bid. The Department has not made any substantive changes to these provisions because they are prescribed by AIPRA. One tribal commenter stated that the regulation should clarify that both trust and fee interests are subject to consolidation by sale. The Department has clarified this in section 152.402. Another tribal commenter asked whether a fee interest owner would be able to trigger a consolidation by sale. Proposed section 152.403 entitles only ''eligible bidders'' to submit applications for consolidation by sale. A fee owner may submit an application if he or she meets one of the categories for ''eligible bidder.'' Finally, the Department revised the definition of ''bona fide'' and made other clarifications.

Partition in Kind: The Department simplified section 152.501, establishing what tracts may be partitioned and deleted the provision excluding partitions of restricted land in Alaska. The preliminary draft included a provision at section 152.606(b) stating that the tribe will not have the right of first refusal where encumbered land is purchased as a result of a foreclosure or sale proceeding. Several tribal commenters asserted that the tribe should have the right to purchase interests that are to be foreclosed and are to be taken into unrestricted fee status. The Department has deleted this provision and instead states that title will be taken in accordance with laws applicable to the foreclosure or sale proceeding.

Distribution Table—25 CFR Part 152

The following distribution table indicates where each of the current regulatory sections in 25 CFR part 152 is located in the proposed 25 CFR part 152.

Current citation	New citation	Title	Remarks
	152.1	What does this part do?	New section.
152.1	152.2	What terms do I need to know?	Adds and amends definitions.
	152.3	Will the Secretary provide ownership information?	New section.
	152.4	To whom will the Secretary provide ownership information?	New section.
	152.5	Which subparts do not apply to Alaska?	New section.

Current citation	New citation	Title	Remarks
152.2	152.101	What transactions are covered by this subpart?	Incorporates AIPRA principles by clarifying that the Secretary will only approve sales of tribal land when made in accordance with a consolidation plan.
	152.102	What must a land consolidation plan include?	New section. Lists items that must be included in a tribal land consolidation plan.
	152.103	Are there any restrictions on a land consolidation plan?	New section.
	152.104	How does the Secretary approve a land consolidation plan?	New section.
	152.105	How does a tribe receive approval for a sale or exchange under a land consolidation plan?	New section.
	152.106	How may the tribe use the proceeds of a sale or exchange?	New section.
	152.107	In the absence of an approved land consolidation plan, how does a tribe get approval for an exchange of tribal land?	New section.
	152.108	What criteria will the Secretary use to determine whether to approve an exchange?	New section.
152.3			Deleted.
152.4	152.701	Application for patent in fee	Redesignated.
152.5	152.702	Issuance of patent in fee	Redesignated.
152.6	152.703	Issuance of patents in fee to non-Indians and Indians with whom a special relationship does not exist.	Redesignated.
152.7	152.704	Application for certificate of competency	Redesignated.
152.8	152.705	Issuance of certificate of competency	Redesignated.
152.9	152.801	Certificates of competency to certain Osage adults	Redesignated.
152.10	152.802	Application for orders removing restrictions, except Five Civilized Tribes.	Redesignated.
152.11	152.803	Issuance of orders removing restrictions, except Five Civilized Tribes.	Redesignated.
152.12	152.804	Removal of restrictions, Five Civilized Tribes, after application under authority other than section 2(a) of the Act of August 11, 1955.	Redesignated.
152.13	152.805	Removal of restrictions, Five Civilized Tribes, after application under authority of section 2(a) of the Act of August 11, 1955.	Redesignated.
152.14	152.806	Removal of restrictions, Five Civilized Tribes, without application.	Redesignated.
152.15	152.807	Judicial review of removal restrictions, Five Civilized Tribes, without application.	Redesignated.
152.16	152.808	Effect of order removing restrictions, Five Civilized Tribes.	Redesignated.
152.17, (152.18).	152.203	Who may convey an interest in trust or restricted land?	Clarifies who may convey interests with Secretarial approval.
152.19			Deleted.
152.20			Deleted.
152.21	152.201	What lands are covered by this subpart?	Clarifies scope of subpart.
	152.202	What transactions are covered by this subpart?	Clarifies scope of subpart.
152.22			Deleted.
	152.204	Who can receive an interest in trust or restricted lands?	New section.
	152.205	What restrictions apply to a conveyance of trust or restricted land to fee status?	New section.
152.23	152.206	How does an owner initiate a negotiated sale, gift, or exchange?	Clarifies what a written request for negotiated sale, gift, or exchange must include.
	152.207	Does a conveyance of a fractional interest require the consent of the co-owner(s)?	New section.
	152.208	Is tribal consent required to convey an interest in trust or restricted land located within the tribe's jurisdiction?	New section.
152.24	152.210	When must fair market value be determined and provided to the grantor?	Establishes circumstances in which grantor may waive right to be provided with information as to the fair market value.
152.25	152.209	Is payment required for a negotiated sale, exchange, or gift?	Removes restrictions for conveyances at less than fair market value because 152.210 entitles the grantor to full information regarding the fair market value.
	152.211	When must the Secretary receive payment for the conveyance of the land?	New section.
	152.212	How does the Secretary decide to approve a negotiated sale, gift, or exchange?	New section.
	152.213	How does the negotiated sale or exchange occur?	New section.
	152.214	When is a negotiated sale, gift, or exchange effective?	New section.
	152.215	How does an Indian Land Consolidation Program lien attach?	New section.

Current citation	New citation	Title	Remarks
	152.216	How is an Indian Land Consolidation Program lien removed?	New section.
	152.217	When can a co-owner acquire an interest previously acquired on behalf of the tribe?	New section.
	152.218	What if there are liens or other encumbrances on the lands to be conveyed?	New section.
	152.301	What lands are covered by this subpart?	New section.
	152.302	What transactions are covered by this subpart?	New section.
	152.303	How does a tribe apply for a parcel purchase?	New section.
	152.304	How and when will owners be notified of an application for tribal parcel purchase?	New section.
	152.305	Can an individual owner preempt and succeed a tribe's right to purchase?	New section.
	152.306	How and when will the Secretary review an application for parcel purchase?	New section.
	152.307	How and when will the conveyance instrument be executed?	New section.
	152.401	What terms do I need to know?	New section.
	152.402	What lands are subject to consolidation by sale?	New section.
	152.403	How do I apply to consolidate a parcel by sale?	New section.
	152.404	What must the Secretary do before acting on an application for consolidation by sale?	New section.
	152.405	What consents are necessary for a consolidation by sale?	New section.
	152.406	How will the Secretary notify owners of the consolidation proceeding?	New section.
	152.407	What action does the Secretary take on comments or objections?	New section.
	152.408	What happens if the Secretary orders a new appraisal?	New section.
	152.409	How can an owner appeal a consolidation by sale proceeding?	Limits discussion of advertising to consolidation by sale.
152.26	152.410	How will the Secretary notify owners of a sale after appeals have been decided?	Limits discussion of advertised sale to consolidation by sale.
152.27	152.411	Who may participate in an auction or sealed bid sale?	New section.
	152.412	How does a tribe reserve its right to match the highest bid?	New section.
152.28	152.413	How will the Secretary determine the successful bidder?	New section.
152.29	152.414	What happens if no bid matches the fair market value?	Deletes provisions allowing the Secretary to reject bids.
152.30	.....	.....	Deleted.
	152.415	When must the highest bidder pay for the purchase?	New section.
	152.416	How will proceeds be distributed?	New section.
	152.417	Is Federal financial assistance available to support a bidder's purchase?	New section.
	152.418	What title is acquired?	New section.
152.31	.....	.....	Deleted.
152.32	152.219	How does a transaction affect collection of construction costs for irrigation projects?	Plain language.
152.33	.....	.....	Deleted. See subpart F.
152.34	.....	.....	Deleted. See subpart G.
152.35	.....	.....	Deleted.
		Subpart F—Partitions in Kind	
	152.501	What lands are covered by this subpart?	New section
	152.502	When does this subpart apply?	New section.
	152.503	How can an owner initiate a partition action?	New section.
	152.504	How will we notify the applicant's co-owners of an application for partition?	New section.
	152.505	How and when will we review an application?	New section.
	152.506	When will we execute the conveyance instruments?	New section.
		Subpart G—Mortgages and Deeds of Trust	
	152.601	What does this subpart do?	New section.
	152.602	How do owners submit an application for approval of a mortgage or deed of trust?	New section.
	152.603	How will the Secretary review the application?	New section.
	152.604	How may the mortgage or deed of trust be enforced?	New section.
	152.605	Does the land remain in trust as a result of foreclosure or sale?	New section.
	152.606	How does the Paperwork Reduction Act affect this part?	New section.

E. 25 CFR Part 179—Life Estates and Present and Future Interests

This regulation sets forth the authorities, policy and procedures governing the administration of life estates and future interests in Indian lands by the Secretary of the Interior.

Amendments to this part explicitly identify the rights and responsibilities of the life tenant, and define the life tenant's share of income, contract bonuses, and royalties derived from the use of the land and the extraction of minerals or other resources from the land. AIPRA established that life estates are ''without regard to waste,'' meaning that the life tenant is entitled to all income, contract bonuses, and royalties derived from use of the land and extraction of resources. The amendments to this part incorporate this change, providing that all life estates created after June 20, 2006, will be entitled to all income, contract bonuses, and royalties, in the absence of an order, conveyance document, or written agreement specifying otherwise.

The amendments delete the Single Life Factor table for determining the respective values of a life estate and remainder share and instead refer to Actuarial Table S, Valuation of Annuities, obtained from 26 CFR 20.2031. The amendments also eliminate the distinction between the genders in determining the value of a life estate; the current regulations generally value life estates held by females higher than those held by males.

New sections address several topics that allow the Department to determine the type of estate and interest in which a beneficial interest may be held, to ensure that the holder of a life estate, the measuring life for a life estate, the holder of a future interest, and class members can be ascertained in all cases, including when the conveyance document or probate order includes conditions. The amendments also address the termination and renunciation of life estates, establish why notification to BIA of the death of a life tenant is important, and establish that term estates will be treated in the same manner as life estates for the purposes of distributing income, cash bonus, and principal.

Changes From Preliminary Draft

The Department added several new definitions, including ''class,'' ''condition,'' ''contingent remainder,'' ''conveyance document,'' ''estate,'' ''executory interest,'' ''extant person,'' ''grantee,'' ''grantor,'' ''holder,'' ''life tenant,'' ''open class,'' ''order,'' ''present interest,'' ''remainderman,'' ''reversionary interest,'' ''Secretary,'' ''term estate,'' and ''vested.'' The Department also added several sections and expanded others since it released the preliminary draft of part 179.

Effect of State Law: The preliminary draft stated that the Department would look to state law for guidance in the absence of Federal law or Federally approved tribal law. This section has been deleted because the Office of Hearings and Appeals will determine when it is appropriate to look to state law.

Ascertaining Beneficial Interests and Classes: The Department has added several provisions that ensure that the Department can determine the type of estate and interest in which a beneficial interest may be held. For example, proposed section 179.3 ensures that the interest in a life estate vests only in specific, living persons, without conditions. Proposed section 179.4 ensures that the ''measuring'' life for a life estate is a specific person who is living at the time the conveyance document is approved or testator dies. Proposed section 179.5 ensures that the interest in future interest holders vests only in specific, extant persons, and if there are conditions, that those conditions can be satisfied before the Secretary's approval of the conveyance document, if the future interests are created by conveyance document, or by the death of the testator, if the future interests are created by will. This section will, in practice, forbid successive future interest in persons who are non-specific, non-living persons. Likewise, proposed sections 179.6, 179.7 and 179.8 indicate that, where the conveyance or will grants an interest to a class, the class will close and any conditions must be satisfied upon approval of the conveyance document or death of the testator. Proposed section 179.8 also describes the circumstances in which the Secretary may close or open a class. These changes allow the Secretary to know, at the time of approval of conveyance document or death of the testator, who holds the beneficial interests.

Without Regard to Waste: During tribal consultations and during the period leading up to the publication of this proposed rule, several tribal commenters expressed concern with the preliminary draft's definition of ''without regard to waste'' and the phrase's effect on protection of the remainderman's interest from abusive practices of the life tenant. AIPRA states that all life estates created on or after June 20, 2006, shall be ''without regard to waste'' and defines this phrase as meaning that the life tenant shall be entitled to all income, including bonuses and royalties, to such land to the exclusion of the remaindermen. The Department has incorporated this concept into the regulations at proposed section 179.12, which provides that, where the order, conveyance document, or written agreement does not specify otherwise, life tenants will be entitled to all income, principal, contract bonuses, and royalties where the life estate was created by a conveyance document after the effective date of this regulation or by an order in a probate case where the testator died on or after June 20, 2006.

The Department has also added sections 179.9, 179.10 and 179.11, which respectively establish the privileges of a life tenant, the responsibilities a life tenant has to the remainderman, and action a remainderman may take to stop a life tenant from damaging and substantially diminishing property. Section 179.10 specifically states that, with respect to life estates created by probate order after June 20, 2006, or by conveyance document after the passage of this regulation, the life tenant may not destroy the estate, commit malicious waste, or fail to reasonably manage the land in a manner consistent with long-term utilization and trust status of the land.

Sale or Leasing of Interests: The Department has clarified in proposed section 179.9 that the life tenant may rent or sell the life estate interest to someone else. Additionally, section 179.10 notes that provisions regarding the relationship between a life tenant and remainderman do not restrict or amend the authority of the Secretary to consent on behalf of interest owners to the leasing or transfer of Indian land.

Value of Current Life Estate and Remainder: Several tribal commenters identified an issue with placing the Single Life Factor chart directly into the text of the regulation, stating that it will be difficult to update. The Department has addressed this issue by deleting the Single Life Factor chart from the text of the regulation and instead referring to an existing chart that is frequently updated.

Distribution Table—25 CFR Part 179

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

Current citation	New citation	Title	Remarks
179.1	179.1	What is the purpose of this part?	Clarifies that these regulations do not apply to any Federal statutory rights to purchase.
179.2	179.2	What terms do I need to know?	Adds several definitions.
179.3	.....	.....	Deleted.
	179.3	Who can hold a life estate?	New section.
	179.4	Who can be the measuring life for a life estate?	New section.
	179.5	Who can be designated as a future interest holder?	New section.
	179.6	Who can be members of a class?	New section.
	179.7	How are interest holders determined if the conveyance document or order contains conditions?	New section.
	179.8	How are members to be determined if there is an open class?	New section.
	179.9	What are the privileges of a life tenant?	New section.
	179.10	What is the life tenant's responsibility to the remainderman?	New section.
	179.11	How can a future interest holder stop the life tenant from damaging his/her interest and substantially diminishing its value?	New section.
179.4	179.12	How will the Secretary distribute income and principal between the life tenant and the remainderman?	Incorporates AIPRA provisions for life estates created after AIPRA's effective date, providing that these life tenants are entitled to all income, principal, contract bonuses, and royalties.
179.5	179.13	How will the value of a current life estate and remainder be determined?	Replaces existing life estate value tables with a reference to one table. Deletes gender as factor affecting life estate values.
	179.14	How does a life estate terminate?	New section.
	179.15	What if I do not want an interest in a life estate?	New section.
	179.16	Why do I need to notify the Secretary about the death of a life tenant?	New section.
	179.17	How will term estates be treated?	New section.
179.6	.....	.....	Deleted.

F. 43 CFR Part 4, Subpart D

Currently, subpart D of 43 CFR part 4 addresses how OHA adjudicates the probate file that BIA prepares under 25 CFR part 15. The amendments remove the probate hearing procedures to a new part 30. See the discussion of these changes below.

G. 43 CFR Part 30

The amendments make many administrative changes to the part to better meet plain language requirements and make the OHA probate process as transparent as possible. In addition, the amendments make several substantive changes. Amendments to this part clarify the two types of probate proceedings (summary and formal), simplify the deadline for filing a claim against an estate, and clarify the authority of administrative law judges, Indian probate judges, and attorney decision makers.

Other amendments reduce the impact of fractionation on trust and restricted lands and expand land consolidation options by incorporating administrative procedures to implement AIPRA provisions related to consolidation agreements, renunciations in favor of a designated recipient, and purchase options at probate. Consolidation agreements permit heirs and devisees to exchange interests in trust or restricted lands for the purpose of consolidating ownership. Renunciations in favor of a designated recipient enable heirs or devisees that would have inherited a trust or restricted interest to renounce that interest in favor of another eligible party. The availability of the option to purchase a decedent's trust or restricted interests has been expanded to allow tribes, eligible family members, and co-owners of trust or restricted interests to exercise the option.

Changes From Preliminary Draft

Because a significant number of issues on 43 CFR part 4 were identified in tribal comments, the following discussion addresses the issues by subheading in the new 43 CFR part 30.

Overall: The Department reorganized some sections in this subpart to provide a better logical flow. For example, the Department moved former sections 4.382 and 4.383, related to the omission and improper inclusion of property in an estate, to sections 30.126 and 30.127 under the ''Judicial Authority and Duties'' subheading. Additionally, former section 4.216, related to what happens when a person dies without a will and has no heirs, has been moved to section 30.254 under the ''Miscellaneous'' subheading. Section 4.217, related to settlement agreements, has been moved to section 30.150, under the new subheading ''Consolidation and Settlement Agreements'' (formerly, this subheading included only consolidation agreements). Provisions related to tribal purchase of interests under special statutes (sections 4.290 through 4.304 of the preliminary draft) have been moved to sections 30.260 through 30.274. The Department also added a few sections under the ''Renunciation of Interests'' and ''Summary Probate Proceedings'' subheadings for clarity.

The Department and tribal commenters identified potential confusion regarding references to ''allocated market value,'' ''estimated market value,'' and ''appraised market value.'' The Department has addressed this issue by deleting references to ''allocated'' and ''estimated'' market value and replaced them with ''appraised'' market value.

Several tribal commenters noted that while the preliminary drafts established timelines for filing an appeal, they did not impose any timelines on OHA to act. For example, several tribal commenters suggested placing a deadline on OHA for designating a case as appropriate for summary or formal hearing and assigning a case to a judge 10 days after receiving the file from BIA. Other tribal commenters suggested imposing a timeframe on notifying

potential heirs that a probate case has been assigned to a judge. Another tribal commenter recommended setting time periods for holding the hearing and issuing a final decision in a probate case. The Department has determined that, given the variation in complexity and resources available, establishing set timelines for judges would not be feasible.

Definitions: In response to tribal comments, the Department modified the current definition of ''interested parties'' to ensure that tribes and co-owners with the option to purchase are included in the definition. Several tribal commenters were concerned that the definition in the preliminary draft was too narrow, and would not provide notice to persons with an interest. The revised definition includes tribes and persons with the option to purchase at probate and all co-owners. (See proposed section 30.102).

Additionally, the Department revised several definitions included in the preliminary draft to ensure consistency with AIPRA and 25 CFR part 15. The Department amended the definition of ''child'' to include adopted children, in response to tribal comments that biological and adopted children should be treated equally in the distribution of property at probate. The Department also amended other terms for precision: for example, it changed ''trust financial assets'' and ''cash assets'' to ''trust personalty'' to encompass both cash and securities; it changed ''beneficiaries'' to ''devisees,'' which is a more precise term including only those who receive under a will; it revised the definitions for ''per stirpes'' and ''de novo'' for clarity; and it deleted the placeholders for definitions for ''residing on'' and ''pretermitted spouse,'' having determined that meanings for these terms are subject to judicial determination based on fact-specific circumstances.

Commencement of Probate Proceedings: The Department clarified in section 30.114 that OHA will provide notice of the formal or summary probate proceeding and eliminated the requirement for BIA to notify potential heirs and devisees when it forwards the probate file to OHA for consideration because sufficient notice is provided by OHA upon designation of the case for a formal or summary probate proceeding.

Judicial Authority: The Department amended section 4.220 of the preliminary draft, relating to the judge's general authority. It is now designated as section 30.120. In proposed subsection (f), the Department clarifies that the probate decision and order, not the terms of the sale, determine how the sale at probate and distribution of interests will occur. The Department also clarifies in proposed subsection (i) that the judge first determines whether the tribe has jurisdiction over the trust or restricted property at issue.

The Department clarified the standard against which a judge may determine a person to be dead based upon an extended unexplained absence. The revisions require credible evidence to establish, by a clear and convincing standard, that the person has had no known contact with any person or entity during the six-year period preceding the hearing. (See proposed section 30.124).

Claims: Tribal commenters pointed out that deadlines for filing claims were both unclear and potentially conflicting. The Department significantly amended the provisions related to deadlines for filing claims to simplify the deadline and make consistent with 25 CFR part 15. The deadlines established in the preliminary draft complicated the matter of determining timeliness of claims and introduced both factual and legal issues, including choice of law issues, to determine when the creditor was chargeable with notice. Additionally, the preliminary draft continued the current requirement that the creditor file with BIA rather than OHA. This requirement is no longer appropriate since BIA no longer conducts any probate hearings. For this reason, the Department is allowing filing of claims with BIA while the probate file is being prepared, or with the OHA once the probate file has been transferred to the OHA. The Department has also clarified what must be included in a claim and eliminated the requirement for filing in triplicate. Additionally, the Department deleted the section related to priority and general claims (what had been sections 4.245 and 4.248 in the preliminary draft).

Settlement and Consolidation Agreements: The Department placed provisions relating to settlement agreements with those relating to consolidation agreements. Revisions to the sections on consolidation agreements now specify that there are two types of consolidation agreements, one including only property in the estate, and another including both property in the estate and other property already owned by the heirs or devisees. The Department added a section allowing parties to a settlement or consolidation agreement the ability to waive valuation of trust property, given that the parties to the agreement may have non-economic reasons for entering into the agreement.

Purchase at Probate: The Department clarified provisions relating to purchase at probate and clarified that, in accordance with AIPRA, an appraisal must be completed to determine market value. The Department also clarified provisions relating to renunciations to clarify who may receive a renounced interest in trust or restricted land, and who may receive a renounced interest in trust personalty. The Department also changed the previous provision that had stated the renunciation would not be valid if the designated recipient of a renounced interest refused to take the interest. Instead, this provision now states that the renounced interest will pass to the heirs of the decedent as if the person renouncing the interest had predeceased the decedent.

Summary Probate Proceedings: The Department clarified what summary probate proceedings are and simplified the criteria for when a summary probate proceeding is appropriate (i.e., when the estate is ''cash only'' and the estate's value does not exceed $5,000 on the date of death). The Department deletes references to consolidation agreements and purchases at probate with regard to summary probate proceedings because such agreements would not apply to a cash-only estate.

Formal Probate Proceedings: In response to tribal concerns regarding notice of a tribe's right to purchase, the Department amended section 4.337 of the preliminary draft to require notice to the tribe of probates of estates with trust or restricted land under the tribe's jurisdiction (see proposed section 30.213).

The Department has deleted the question related to the judge's authority to require a person to appear at a hearing (section 4.334 of the preliminary draft) because, while the judge does have this authority, the judge's subpoena authority is broader than the question and answer indicates. The section related to notice of a requirement to appear at a hearing has also been deleted to avoid confusion.

With regard to contests of self-proved wills, the Department has added a provision allowing the judge to order the deposition of a witness at a location reasonably near the witness's residence, where no attesting witness resides near the place of the hearing.

The Department has also clarified that the official record of the probate case and decisions contain settlement agreements, consolidation agreements, renunciations and acceptances of renounced property, and additional items where interests are sold at probate.

Miscellaneous: The section addressing the rights of inheritance of someone who kills the decedent has been revised to comply with AIPRA. The Department also clarifies that a judge may allow fees for attorneys representing interested parties, but not creditors and that a judge may order the payment of fees to a guardian ad litem.

Distribution Table—43 CFR Part 4, Subpart D

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

Current citation	New citation	Title	Remarks
4.200	30.100	How do I use this subpart?	Adds updated references.
	30.101	Will the Secretary probate all the land or assets in an estate?	New section.
4.201	30.102	What terms do I need to know?	Adds definitions for ''BLM,'' ''consolidation agreement,'' ''directional disclaimer,'' ''probate staff,'' ''purchase option.'' Replaces ''deciding official'' with ''judge.'' Deletes definition of ''solicitor.''
4.210, 4.211	30.110	When does OHA commence a probate case?	Plain language.
	30.111	How does OHA commence a probate case?	Plain language.
	30.112	What must a complete probate file contain?	Plain language.
	30.113	What will OHA do if it receives an incomplete probate file?	Adds that OHA may issue a subpoena for the missing information or proceed with a hearing.
	30.114	What notice of the probate case will OHA send me?	Adds that OHA will provide notice upon receipt of the probate file.
	30.115	Can I review the probate file?	New section.
4.202	30.120	What authority does the judge have in a probate case?	Deletes criteria for when a formal hearing is necessary. Adds new categories of authority.
	30.121	May a judge appoint a master in a probate case?	New section. Allows judge to appoint masters.
	30.122	Is the judge required to accept the master's recommended decision?	New section.
4.206	30.123	Will the judge determine matters of status and nationality?	Plain language.
4.204, 4.203	30.124	Can a judge find a person to be dead by reason of unexplained absence?	Establishes standard for finding that any person is dead.
4.205	30.154	What happens when a person dies without a will and has no heirs?	Incorporates AIPRA references.
4.242	30.125	May a judge reopen a probate case to correct errors and omissions?	Plain language. Identifies circumstances in which judge may reopen probate case.
	30.130	When must a judge or attorney decision maker (ADM) recuse himself or herself from a probate case?	New section.
	30.131	Where may a judge or ADM seek guidance on recusal?	New section.
	30.132	May an interested party to a probate proceeding excuse a judge from hearing a case?	New section.
	30.133	May an interested party to a probate proceeding request that a judge recuse?	New section.
	30.134	What must the judge consider when deciding whether to recuse?	New section.
	30.135	What action will the judge take after deciding to recuse himself or herself?	New section.
	30.136	How will the case proceed once the judge has recused?	New section.
	30.137	Can I appeal the judge's recusal decision?	New section.
	30.138	When can I appeal the judge's recusal decision?	New section.
4.250(a)	30.140	When must I file a claim against the probate estate?	Amends deadline for filing claims.
4.250(c)	30.141	How must I file a creditor claim against the probate estate?	Eliminates requirement for triplicate filing. Clarifies what must be included in the affidavit and itemized statement.
4.250(b)	30.142	Will a judge authorize payment of a claim from the trust estate where the decedent's non-trust estate may be available?	Plain language.
4.250(d)–(f)	30.143	Are there any categories of claims that may not be allowed?	Adds category for claims attributable to payments for general assistance, welfare, or similar assistance.
4.251(a)	30.144	May the judge authorize payment of the costs of administering the estate?	Plain language.
4.251(b)		What are priority claims the deciding official may authorize payment for?	Deleted.
4.251(c)		When may the deciding official authorize payment of general claims?	Deleted.
4.251(d)	30.145	When can a judge reduce or disallow a claim?	Plain language.
4.251(e)–(g)	30.147	What happens if there is not enough money in the IIM account to pay all the claims?	Plain language.

Current citation	New citation	Title	Remarks
4.251(h)	30.148	Will interest or penalties charged against claims after the date of death be paid?	Plain language.
4.252	30.146	What property is subject to claims?	Plain language.
4.207	30.150	If the interested parties agree to settle matters among themselves, what does the judge do?	Plain language. Deletes reference to liability for irrigation construction and operation costs. Deletes provisions regarding preparation, deliverance, and approval of deeds.
	30.151	May the devisees or eligible heirs in a probate proceeding consolidate their interests?	New section. Adds AIPRA provisions allowing for consolidation agreements.
	30.152	May the parties to a settlement agreement or consolidation agreement waive valuation of the trust property?	New section.
	30.153	Is an order approving a consolidation agreement or settlement agreement considered a partition or sale transaction?	New section. Clarifies basis and procedures for approval of consolidation agreements.
	30.160	What can be purchased at probate?	New section. Incorporates provisions for purchase at probate.
	30.161	Who can purchase at probate?	New section. Incorporates definition for eligible purchaser.
	30.162	Does property purchased at probate remain in trust or restricted status?	New section.
	30.163	Is consent required for a purchase at probate?	New section. Adds provisions describing when consent of an heir or devisee is required for a purchase at probate.
	30.164	What must I do to purchase at probate?	New section. Adds provisions describing procedure for requesting a purchase at probate.
	30.165	Who will OHA notify of a request to purchase at probate?	New section. Adds provisions for notification by OHA and required contents of the notice.
	30.166	What will the notice of the request to purchase at probate include?	New section.
	30.167	How does OHA decide whether to grant a request to purchase at probate?	New section.
	30.168	What will the judge consider in determining the market value of an interest?	New section. Clarifies that a judge must base the market value on an appraisal that meets certain standards.
	30.169	If I do not agree with the appraised market value, what can I do?	New section. Establishes process for challenging appraisal.
	30.170	What happens when OHA grants a request to purchase at probate?	New section. Clarifies the procedures for notifying the successful bidder and finalizing the sale.
	30.171	When must the successful bidder pay for the interest purchased?	New section.
	30.172	What happens after the successful bidder submits payment?	New section.
	30.173	What happens to the money from the sale?	New section. Clarifies that the Department will distribute the money from the sale to the appropriate heirs, devisees, and/or spouse.
	30.174	What happens if the successful bidder does not pay within 30 days?	New section. Clarifies that the sale will be cancelled if the successful bidder fails to pay the bid within 30 days.
4.208	30.180	May I give up an inherited interest in trust or restricted property or trust personalty?	Plain language.
	30.181	How do I renounce an inherited interest?	Plain language.
	30.182	Who may receive a renounced interest in trust or restricted land?	New section.
	30.183	Who may receive a renounced interest of less than 5 percent in trust or restricted land?	New section.
	30.184	Who may receive a renounced interest in trust personalty?	New section.
	30.185	Can my designated recipient refuse to accept the interest?	New section.
	30.186	Are renunciations that predate the American Indian Probate Reform Act of 2004 valid?	New section.
4.208(c)	30.187	May I revoke my renunciation?	Plain language.
4.208(b)	30.188	Does a renounced interest vest in the person who renounced it?	Plain language.
4.212	30.200	What is a summary probate proceeding?	Deletes provision stating that Federal law or tribal code may prevent summary processing.
	30.202	May I request a summary probate proceeding be replaced by a formal proceeding?	Changes time period for filing a request for formal hearing from 60 days to 30 days.
	30.201	What does a notice of a summary probate proceeding contain?	New section.
4.213			Deleted.

Current citation	New citation	Title	Remarks
4.214	30.203	What must a summary probate decision contain?	Adds provisions regarding renunciation. Deletes provisions regarding dower, curtesy, and homestead, and requirement to attach certified inventory of trust or restricted lands. Changes time in which decision will become final from 60 days to 30 days.
4.215(a)–(c)	30.204	How do I seek review of a summary probate proceeding?	Changes time period for filing request for de novo review from 60-day period to 30-day period.
4.215(d)			Deleted. Provision had allowed persons to request de novo review after expiration of time period for filing request under certain circumstances.
4.215(e)	30.205	What happens after I file a request for a de novo review?	Plain language.
	30.206	What happens if nobody files for a de novo review?	New section. Establishes what happens at expiration of 30-day period for filing de novo review.
4.216	30.210	How will I receive notice of the formal probate proceeding?	Adds locations for posting. Deletes provision establishing that interested parties living near posting will be bound by decision.
	30.213	What notice to a tribe is required in a formal probate proceeding?	Expands notice to tribes where there is a statutory option to purchase to provide notice to tribe of every formal probate proceeding involving trust or restricted land over which the tribe has jurisdiction.
	30.211	Will the notice be published in a newspaper?	New section.
	30.212	Can I waive notice of the hearing, the time limits, or form of notice?	New section.
4.217	30.214	What must a notice of hearing contain?	Plain language. Adds provisions regarding consolidation and renunciation.
4.220(a), (c)	30.215	How can I obtain documentation related to the probate proceeding?	Plain language. Adds provisions.
4.221(a)–(c)	30.216	How does an interested party obtain permission to take depositions?	Plain language.
4.221(d)–(g)	30.217	How is a deposition taken?	Plain language.
4.221(h)	30.218	How may the transcript of a deposition be used?	Plain language.
	30.219	Who pays for the costs of taking a deposition?	New section.
4.222	30.220	How does an interested party obtain written interrogatories and admission of facts and documents?	Plain language. Deletes provision regarding cross-interrogatories.
4.223	30.221	May the judge limit the time, place, and scope of discovery?	Plain language.
4.224	30.222	What happens if a party fails to comply with discovery?	Provides that the judge may draw inferences adverse to the claims of the party who failed to comply with the discovery request.
4.225	30.223	What is a prehearing conference?	Plain language.
4.230	30.224	Can a judge compel a witness to appear and testify at a hearing?	Establishes procedure for requesting a subpoena.
4.231	30.225	Are probate hearings open to the public?	Clarifies that probate hearings are open to public. Establishes that the judge may seal the record or transcript of sequestered hearings.
	30.226	Must testimony in a probate proceeding be under oath or affirmation?	Plain language.
	30.227	Is a record made of formal probate hearings?	Plain language.
4.232	30.228	What evidence is admissible at a probate hearing?	Clarifies evidentiary admissibility matters.
4.233(a)–(b)	30.229	Is testimony required for self-proved wills or codicils?	Moves affidavit language to 25 CFR part 15. Adds that judge may order deposition of available attesting witnesses at location reasonably near residence of witness.
4.233(c)	30.230	What if approval of the self-proved will, codicil or revocation is contested?	Plain language.
4.234	30.231	Who pays witnesses' costs?	Plain language.
4.235	30.232	May a judge schedule a supplemental hearing?	Plain language.
4.236(a)	30.233	What will the official record of the probate case contain?	Plain language.
4.236(b)	30.234	What will the judge do with the original record?	Plain language.
	30.235	What happens if a hearing transcript has not been prepared?	Plain language.
4.240(a)	30.236	What will the judge's decision in a formal probate hearing contain?	Specifies what decision will contain in intestate case and in testate case. Adds provisions for renunciations, consolidation and settlement agreements, and purchases at probate.
4.240(b)	30.237	What notice of the decision will the judge provide?	Changes time period from 60 to 30 days.
4.241(a)	30.238	May I file a petition for rehearing if I disagree with the judge's decision in the formal probate hearing?	Changes time period for filing petition from 60 to 30 days. Requires judge to forward copy of petition to affected agencies.

Current citation	New citation	Title	Remarks
4.241(b)	30.239	Does any distribution of the estate occur while a petition for rehearing is pending?	Plain language.
4.241(c)–(e)	30.240	How will the judge address a petition for rehearing?	Plain language.
4.241(f)	30.241	Can I submit another petition for rehearing?	Clarifies that judge's jurisdiction over case ends upon final disposition of petition for rehearing, except for reopening.
4.241(g)–(h)			Deleted.
	30.242	When does the judge's decision on a petition for rehearing become final?	New section. Establishes that decision does not become final for 30 days.
4.242	30.243	Can a closed probate case be reopened?	Changes time for filing petition and measures from date error was discovered. Clarifies standard for reopening.
	30.244	How will the judge address my petition for reopening?	Plain language.
	30.245	What happens if the judge reopens the case?	Eliminates 75-day period for not distributing.
4.242(h)–(i)			Deleted.
	30.246	When will the decision on reopening become final?	New section.
4.261	30.250	When does the anti-lapse provision apply?	Plain language.
4.262	30.251	What happens if an heir or devisee knowingly participates in the willful and unlawful killing of the decedent?	Changed from ''feloniously taking a testator's life'' to comply with AIPRA language. Expands to apply to intestate succession. Establishes that person will be treated as if predeceased.
4.270			Deleted.
4.271	30.126	What happens if property was omitted from the inventory of the estate?	Plain language.
4.272	30.127	What happens if property was improperly included in the inventory of the estate?	Plain language.
4.273			Deleted.
4.281	30.252	Can a judge allow fees for attorneys representing interested parties?	Plain language. Allows fees for all interested parties, except creditors.
4.282	30.253	How must minors or other legal incompetents be represented?	Plain language.
4.300(a)	30.260	What land is subject to a tribal purchase option at probate?	Plain language.
4.300(b)–(d)	30.261	What determinations with regard to a tribal purchase option will a judge make?	Plain language.
4.301	30.262	When will BIA furnish a valuation of a decedent's interests?	Plain language.
4.302(a)	30.263	When is a final decision issued?	Plain language.
4.302(b)	30.264	When may a tribe exercise its statutory option to purchase?	Plain language.
	30.265	How does a tribe exercise its statutory option to purchase?	Plain language.
4.303	30.266	May a surviving spouse reserve a life estate when a tribe exercises its statutory option to purchase?	Plain language.
4.304	30.267	What if I disagree with the probate decision regarding tribal purchase option?	Plain language.
4.305(a)	30.268	May I demand a hearing regarding the tribal option to purchase decision?	Plain language.
4.305(b)	30.269	What notice of the hearing will the judge provide?	Plain language.
4.305(c)–(d)	30.270	How will the hearing be conducted?	Plain language.
4.306	30.271	How must the tribe pay for the interests it purchases?	Plain language.
4.307(a)	30.272	What are the Superintendent's duties upon payment by the tribe?	Plain language.
4.307(b)	30.273	What action will the judge take to record title?	Plain language.
4.308	30.274	What happens to income from land interests during pendency of the probate?	Plain language.
4.320(a)	4.320	Who may appeal a judge's order on petition for rehearing or reopening?	Plain language.
4.320 (b)(1)–(3)	4.321	How to appeal a judge's order on petition for rehearing or reopening or regarding purchase of interests in a deceased Indian's trust estate.	Plain language.
	4.322	What an appeal must contain.	Plain language.
4.320(c)	4.323	Service of the notice of appeal.	Plain language.
4.320(d)	4.324	Record on appeal.	Plain language.
4.321	4.325	Docketing the appeal.	Plain language.
4.322	4.326	Disposition of the record.	Plain language.

V. Public Comments

During the period prior to this publication, from December 27, 2005 to March 31, 2006, the Department received correspondence (e-mails, letters, and faxes) from tribes and individual Indians. Of these, the majority addressed at least one of the regulations being proposed today. The remaining addressed only those regulations that were part of the December 27, 2005 package sent to the tribes, but are not part of this proposed rule. The Department has stored these comments so that it can review them when it addresses those remaining regulations.

These comments raised several issues that the Department considered in preparing the drafts for publication as a proposed rule. A summary of those issues that were considered in developing the proposed regulatory language is provided under a subheading ''changes to preliminary drafts'' under the discussion of each part in the Part-by-Part Analysis. There will also be a 60-day public comment period following this publication. Subsection B provides directions for submitting written comments and information on upcoming tribal consultations addressing this rulemaking.

A. Comments Received Prior to This Publication

The Department provided tribal leaders with preliminary drafts of this proposed rule in December 2005 and requested comment by the end of March 2006. Additionally, the Department held two pre-publication tribal consultation sessions in February 2006 and March 2006 to obtain input on the preliminary drafts.

As previously mentioned, the Department received an overwhelming number of comments during the Albuquerque tribal consultation regarding the volume of regulatory text and number of preliminary draft regulations. In response to these comments, the Department has decided to first focus on those regulations required for, or closely related to, implementation of AIPRA. These regulations are being published today. These regulations are a priority for the Department because they are necessary to implement AIPRA, which became fully effective on June 20, 2006. The remaining regulations that were distributed as preliminary drafts will be re-examined and consulted on at a future date.

Issues raised during tribal consultations and in the time leading up to publication of this proposed rule that are specific to one or more regulations or regulatory sections are addressed in the Part-by-Part Analysis, below.

B. Directions for Submitting Comments

The regulatory amendments proposed in this rulemaking include substantive changes streamlining and standardizing Department procedures to better serve beneficiaries and incorporating statutory law. The amendments also include revisions that are simply administrative in nature, including changes to better meet plain language requirements, defining acronyms, and updating personnel and agency titles. Both tribal and non-tribal members of the public are invited to make substantive comment on any of these changes, whether they be with respect to substantive or administrative changes.

Two copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. Comments may also be telefaxed to (202) 208–5320 or submitted by electronic mail (''email'') to *Michele_F_Singer@ios.doi.gov.* For comments submitted electronically, please include the number 1076–AE59 in the subject line of the message. All comments received will be available for public inspection at the Department of the Interior, 1849 C Street, NW., Washington, DC 20240. All written comments received by the date indicated in the **DATES** section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the final rule. Any information considered to be confidential by the commenter must be so identified and submitted in writing. The Department of the Interior reserves the right to determine the confidential status of the information and to treat it according to our determination (see 10 CFR 1004.11).

The Department has scheduled an additional consultation meeting in Rapid City, South Dakota on July 27, 2006, from 8 a.m. to 5 p.m., at the Best Western Ramkota Hotel and Conference Center. The Department also plans to host two additional consultation meetings in Billings, Montana on August 8, 2006, from 8 a.m. to 5 p.m., at the Sheraton Billings Hotel and in Minneapolis, Minnesota on August 10, 2006, from 8 a.m. to 5 p.m., at the Ramada Mall of America. All tribal and non-tribal persons interested in this rulemaking are encouraged to participate in these consultations.

VI. Procedural Requirements

A. Regulatory Planning and Review (Executive Order 12866)

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

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

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

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

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

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

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

This rule will not have an annual effect on the economy of $100 million or more, as described below. The following discussion individually addresses each Code of Federal Regulations (CFR) part and significant changes within each part, where appropriate. Within the discussion of each CFR part is a brief statement of the major changes, the baseline (i.e., the current state of affairs), an analysis of the economic effect of the change in comparison to the baseline alternative, and a brief conclusion.

25 CFR Part 15

This part governs the processing of probate estates by BIA. Amendments will ensure that the BIA compiles

sufficient information into the probate file so that when BIA passes the probate file on to OHA, OHA can properly administer the probate estate. The baseline for this analysis is the existing part 15, which does not incorporate requirements for certain items of information to be included in the probate file.

The Secretary has sole statutory authority to probate Indian estates. 25 U.S.C. 372; *First Moon* v. *White Tail & United States*, 270 U.S. 243, 46 S. Ct. 246, 70 L. Ed. 565; *United States* v. *Bowling*, 256 U.S. 484, 41 S. Ct. 561, 65 L. Ed. 1054; *Lane* v. *United States*, 241 U.S. 201, 36 S. Ct. 599, 60 L. Ed. 956; *Hallowell* v. *Commons*, 239 U.S. 506, 36 S. Ct. 202, 60 L. Ed. 409. *Bertrand* v. *Doyle*, 36 F.2d 351 (10th Cir. 1929). As such, it is imperative that the Secretary have all the information necessary to properly determine the heirs and distribute estate assets. The alternative to these amendments (i.e., the baseline) would deprive OHA of the information it needs to accurately identify what property is part of the estate, who the heirs and devisees are, and how the property should be distributed among the heirs and devisees. The recently enacted AIPRA amendments to ILCA, 25 U.S.C. 2201 *et seq.*, affects the determination of how property should be distributed among the heirs and beneficiaries by allowing certain persons to purchase interests in property at probate and consolidation agreements, and affecting who can inherit a small fractional interest. AIPRA therefore directly affects the determinations that OHA will make and requires additional information to be included in the probate file.

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

25 CFR Part 150

The revised Part 150 provides clarification of the LTRO's procedures and increases the ability of the LTRO to provide services and products to Indians, tribes, and the public. Specifically, the amendments describe the LTRO process for receiving and recording title instruments, clarify what services and products LTRO provides, and clarify what documents qualify as title instruments. Currently, the regulations do not clearly define the procedures, products, and services of the LTRO. Finally, the amendments provide a schedule of fees for non-probate LTRO products and services that will be charged.

Those parts of the regulation that describe the processes, services, and products of the LTRO will have no effect on the economy. The amendments that establish fees for LTRO services and products are comparable to those fees charged by local governments for the comparable services and products. These amendments merely redistribute the costs by requiring fees normally paid for by the public at large to be borne by the individuals, other than the excepted categories of individuals, directly benefiting from the service or product. Therefore the effect, if any, on the economy resulting from these amendments is minimal.

For these reasons, the amendments to part 150 will not have an effect on the economy.

25 CFR Part 152

Amendments to this part reorganize subparts and sections within subparts for clarity. Procedures for each of the following conveyances are now clarified:

- Allowing for conveyances at less than fair market value under certain circumstances (see § 152.109);
- Tribal option to purchase where land is proposed to be conveyed in unrestricted fee (see § 152.206);
- Conveyances of fractional interests without tribal consent under certain circumstances. Also, tribal options to purchase interests being sold, gifted or exchanged by individual Indians where the tribe has enacted a law that imposes such a requirement (see § 152.209);
- Tribal tract purchases of fractional interests of non-consenting owners (see Subpart D at § 152.302); and
- Eligibility for conveying trust and restricted land (see § 152.203).

Additionally, the amendments implement ILCA policy goals and AIPRA provisions allowing for:

- Conveyances in accordance with tribal land consolidation plans (see subpart B at § 152.101);
- Consolidation of highly fractionated tracts by purchase of interests at fair market value (see subpart E at § 152.401); and
- Partition of fractionated lands to unitize interests (see subpart F at § 152.501).

The amendments also detail eligibility for conveying trust and restricted land, conveying trust and restricted land at less than fair market value, the attachment and removal of Indian Land Consolidation Program liens, and the procedures for mortgages and deeds of trust.

The baseline for this analysis is the current part 152, which does not incorporate AIPRA's provisions advancing consolidation goals. The current part 152 allows for partition of inherited allotments but does not extend partition to other tracts of trust or restricted land or tracts in which fractional interests are held in unrestricted fee status.

a. Tribal Land Consolidation Plans

Amendments to part 152 add provisions regarding tribal land consolidation plans by providing that the Secretary will approve only: (1) Those exchanges and negotiated sales of tribal land that are made pursuant to an approved land consolidation plan and in which the tribe receives at least 90% of the fair market value or greater; and (2) those exchanges made in the absence of a land consolidation plan in which the tribe receives the fair market value or greater. Part 152 restricts the tribe's use of consideration received from negotiated sales and exchanges in accordance with a tribal land consolidation plan to the purchase of other lands as described in the tribal consolidation plan.

These changes from the existing regulation will assist tribes in reducing fractionation and strengthening their land base. A tribal consolidation plan must include the following elements: a description of the land; maps depicting the land to be conveyed and interests to be purchased; an explanation of how the plan will reduce fractionation; and an appropriate tribal authorization. The cost to the tribe of putting together a tribal consolidation plan is estimated to be $2,500. The Secretary is encouraging all Federally recognized tribes to prepare a tribal land consolidation plan. Thus, the total cost resulting from the plan requirement for each of the 562 tribes will be $1.4 million. However, tribes will likely prepare and submit the plans over a period of at least ten years, resulting in an annual cost to tribes of $140,000. This cost is slightly overestimated because some tribes already have a land consolidation plan.

b. Tribal Option To Purchase Where Land Is Conveyed in Unrestricted Fee

The amendments grant tribes the opportunity to purchase trust or restricted lands being proposed for transfer out of trust or to unrestricted status. The benefit of this provision is that it strengthens tribal land holdings.

There are no apparent costs related to this option, as the grantor will receive consideration for the interest being conveyed. Additionally, an exception is provided for those instances where the interest is part of a family farm.

c. Consent for Conveyances

The amendments provide that an owner may convey his or her fractional interest without the consent of co-owners and that owners of 100% of the interests in a tract do not need the consent of the tribe. These provisions grant individuals the right to control conveyances of their interests. The benefit of these provisions includes strengthening individual Indians' abilities to convey and consolidate fractional interests. The co-owners share in this benefit. Additionally, marketability of the land interests is increased with removal of the consent requirement. There is no cost to these provisions because the land remains in trust status.

These amendments also require tribal consent for conveyance of a fractional interest where the tribe has an approved tribal probate code restricting the inheritance rights of the grantee. This provision strengthens tribal control over land within its jurisdiction. No apparent costs are associated with this provision.

d. Tribal Tract Purchases

The tribal tract purchase amendments implement provisions of AIPRA authorizing the Secretary to convey the fractional interests of any non-consenting trust and restricted owners to a tribe, where the tribe owns at least 50% of the trust or restricted interests in the tract or has obtained the consent of the owners of at least 50% of such interests.

These provisions increase tribes' ability to obtain and consolidate fractional interests. Ultimately, this will grant the tribes more economic power through land holdings. Additionally, individual interests held in trust and restricted status are subject to restrictions on transfer. The cost of restricting free transfer without the approval of the Secretary or tribe affects the value of the interest. The value of land is not affected by the percentage of consent required, except to the degree that the time in which transfer occurs may be lessened by reducing the percentage required, thus increasing marketability.

e. Consolidation by Sale of Highly Fractionated Tracts

Consolidation by sale applies to trust and restricted lands, on or off reservation, that are highly fractionated parcels. In order to consolidate by sale, an eligible applicant must obtain certain consents including consent of the owners of at least 50% of the undivided interests in the parcel. Consolidation of highly fractionated parcels by sale will increase individual Indians' and tribal land holdings, providing them with greater economic power and use of land. As stated above, individual interests held in trust and restricted status are subject to restrictions on transfer. The cost of restricting free transfer without the approval of the Secretary or tribe affects the value of the interest. The value of land is not affected by the percentage of consent required, except to the degree that the time in which transfer occurs may be lessened by reducing the percentage required, thus increasing marketability.

Allowing consolidation by sale is expected to reduce the proportion of highly fractionated interests. The cumulative transfers of property achieved via consolidation by sale is not expected to impact the economy. However, economic benefits are expected to accrue by allowing owners greater economic power and control of the use of their land.

f. Partition in Kind

This subpart authorizes the Secretary to subdivide trust and restricted land with multiple owners into smaller tracts in which the interests of the owners are unified or consolidated, where the owners have been unable to accomplish such a partition in kind by exchange of deeds. Any owner of a fractional interest may apply to the Secretary for a partition. This new subpart will provide owners with greater control over their land; there is no apparent effect on the economy.

g. Eligibility for Conveying and Receiving Individually Owned Interests in Trust or Restricted Status

The amendments clarify that individual Indians (or their guardians, etc.) may convey lands and that only tribes, individual Indians, and other co-owners in trust or restricted status may acquire individually owned trust or restricted land. This clarification is made to ensure that individual Indians without a tribal land base are permitted to convey and receive interests in trust or restricted status. This provision will have no economic effect.

h. Conveyance of Individually Owned Interests at Less than Fair Market Value

The amendments remove restrictions on conveying individually owned interests at less than fair market value, as long as the grantor is provided with information regarding the fair market value. This will increase the ability of individuals to sell their land as they choose. Additionally, these amendments make land interests more marketable by reducing the restrictions on transfer. The cost of obtaining information on fair market value was already required, so the amendments add no new costs.

i. Attachment and Removal of Indian Land Consolidation Program Liens

These amendments implement AIPRA provisions regarding the Indian Land Consolidation program liens, in which a lien in the amount of the purchase price attaches to income derived from any interest purchased through the Indian Land Consolidation Program. This provision has no apparent costs as the lien is removed upon satisfaction.

j. Mortgages and Deeds of Trust

These amendments detail existing procedures by which the Secretary approves mortgages or deeds of trust encumbering individually owned land, where all of the trust or restricted interests in a tract are being encumbered and made subject to foreclosure or sale in the event of a default on the loan being secured by the approved document. There is no quantifiable effect on the economy because the title remains in trust even if foreclosure occurs.

Cumulatively, part 152 will not have a significant or quantifiable effect on the economy.

25 CFR Part 179

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

- Incorporates AIPRA's requirement that life estates after June 20, 2006, will be ''without regard to waste,'' meaning that the life tenant is now entitled to receipt of all income—including rents and profits, such as contract bonuses and royalties, and the interest on invested principal—from the land. However, the testator can still specify in the conveyance document distributions to the life tenant and remaindermen different from those established by AIPRA.
- Changes the discount rate to make it consistent with the Internal Revenue Service's valuations of life estate, which will generally provide the remaindermen with more value than under the current 6% discount rate.

The existing part 179 provides that the life tenant will have the rights to all rents and profit, as income, from the estate, but did not provide that such rights were ''without regard to waste.''

Therefore, the existing part 179 required the life tenant to ensure that it did not diminish the estates of the remainderman in its pursuit of rents and profits. Additionally, the existing part 179 required contract bonuses to be split one-half each to the life tenant and remainderman, whereas now the life tenant is entitled to the full amount of the contract bonus.

The first primary change to part 179 is necessary to reflect the AIPRA section establishing that life estates will be determined ''without regard to waste,'' meaning that the life estate holder is entitled to the receipt of all income, including bonuses and royalties, from such land, to the exclusion of remaindermen. *See* 25 U.S.C. 2201(10), 2205(a)(3), 2206(a)(2). These amendments comply with the provisions of AIPRA with respect to life estates after June 20, 2006. The testator can still specify in the conveyance document distributions to the life tenant and remaindermen different from those established by AIPRA. There is no change with respect to life estates created before June 20, 2006.

Amendments to the discount rate make the rate consistent with the Internal Revenue Service's valuations of life estate, which will generally provide the remaindermen with more value than under the current 6% discount rate.

The cost of amendments incorporating ''without regard to waste'' provisions could be a deferred value of the remaindermen's estate. However, amendments to the discount rate will generally provide remaindermen with more value. These amendments may affect the timing of the distribution of the value of the land between life tenants and remaindermen, but will not affect the economy as a whole.

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

43 CFR Parts 4 and 30

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

The existing 43 CFR part 4 does not contain any of the methods for acquiring interests at probate that have recently been established by AIPRA. Additionally, the current time period for filing requests for de novo review and rehearing is 60 days.

Neither the existing part 4 nor the amendments to part 4 affect the economy. Because these provisions relate to the adjudication of probate estates and will not affect the amount of money and property within each estate that is distributed, nor the number of estates that must be probated, they have no effect on the economy. For these reasons, amendments to 43 CFR part 4, subpart D, and the new 43 CFR part 30 will not affect the economy.

New 25 CFR Part 18 (Tribal Probate Codes)

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

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

AIPRA will govern the descent and distribution of trust and restricted property owned by a deceased Indian in the absence of a will. In the alternative, approved tribal probate codes will also govern the distribution of trust property, but will not directly affect the economy. These regulations, which implement statutory provisions for Secretarial approval of tribal probate codes, do not affect the economy because tribes were already authorized to establish tribal probate codes and statutorily required to submit such codes to the Secretary for approval.

For these reasons, the proposed new CFR part, 25 CFR part 18, will not affect the economy.

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

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

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

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

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

(c) In 25 CFR part 150, the rule establishes user fees for services and products provided by LTRO. The Secretary had the right to charge fees under the prior regulation, but the revised part 150 describes the Secretary's intent to begin charging fees to persons who are not excepted. Under 25 U.S.C. 14b, the Secretary may order that such funds be directed to the appropriation account for LTRO. Because the categories of persons who are exempt from the fees is so large, the budgetary impact of the revised part 150 will be minimal.

(d) In 25 CFR part 152, the rule implements AIPRA provisions to allow for consolidation of highly fractionated lands, purchase of interests at fair market value, and consolidation agreements. These provisions broaden tribes' rights to acquire interests through tribal tract purchases. Where interests are acquired at the fair market value, the Secretary may contribute money from the Acquisition Fund. ILCA established the Acquisition Fund, authorizing the Secretary to disburse appropriations to acquire fractional interests at fair market value and to collect all revenues from the lease, permit, or sale of resources from acquired interests or paid by Indian landowners. By broadening tribes' rights to acquire interests into trust, revisions to part 152 may increase use of Acquisition Funds.

Additionally, subpart K of part 152 allows for the partition of lands into smaller parcels where the interests are unified. Under ILCA, grants are available to successful bidders for partitions; however, the amendments do not affect the grants. Because conveyance of trust and restricted interests is generally voluntary, these amendments do not involve entitlements, grants, user fees, or loan programs, and therefore do not affect the budget of the Department or the rights and obligations of recipients.

(e) In 25 CFR part 179, the respective rights of a life estate tenant and remaindermen are changed, as of June 20, 2006. This change entitles the life tenant to receipt of all income—including rents and profits, such as contract bonuses and royalties—from the land. However, the testator can still specify in the conveyance document distributions to the life tenant and remaindermen different from those established by AIPRA. The Department anticipates that this change in rights will not impact the budget.

(f) The new regulation addressing tribal probate codes will not materially alter the Department's budget because the regulation merely implements the existing statutory requirement for Departmental review of tribal probate codes; nor does the regulation affect the rights and obligations of recipients, as tribes' probate codes were already subject to Departmental review.

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

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

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

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), requires Federal agencies to conduct a regulatory flexibility analysis when publishing a notice of rulemaking for any proposed or final rule. The regulatory flexibility analysis determines whether the rule will have a significant economic effect on a substantial number of small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). Indian tribes are not considered to be small entities for the purposes of the Act and, consequently, no regulatory flexibility analysis has been done to address the effects on Indian tribes.

Because the proposed rule is limited to probated estates, land, and assets within the United States and within tribal communities, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises. Accordingly, this proposed rule will not have an economic impact on a substantial number of small entities and requires no regulatory flexibility analysis.

C. Small Business Regulatory Enforcement Fairness Act of 1996

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

The proposed rule is not ''major'' within the meaning of SBREFA because it is exclusively confined to the Federal Government, individual Indians, and tribes, but the proposed rule may require some limited additional expenditures by tribes, as discussed in subsection (h) of the procedural requirements (Paperwork Reduction Act) of this preamble.

However, the proposed rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year.

Because the proposed rule is limited to probated estates, land, and assets within the United States and within tribal communities, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises. Accordingly, this proposed rule will not have an economic impact on a substantial number of small entities and requires no regulatory flexibility analysis.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. If the Federal agency promulgates a proposed or final rule with ''Federal'' mandates that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, the Federal agency must prepare a written statement, including a cost-benefit analysis of the rule, under section 202 of the UMRA. The term ''Federal mandate'' means any provision in statute or regulation or any Federal court ruling that imposes ''an enforceable duty'' upon state, local, or tribal governments, and includes any condition of Federal assistance or a duty arising from participation in a voluntary Federal program that imposes such a duty.

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

25 CFR Part 15

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

- Part 15 contains a mandate for tribal governments to provide information when necessary to complete a probate file. This provision is aimed at requiring tribes to provide information that is already readily available to them, such as family history data.
- Part 15 also contains a mandate for the public, presumably someone closely

associated with the decedent, to provide either a death certificate or other information regarding the death.

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

25 CFR Part 150

The revised part 150 clarifies LTRO processes, services, and products. This part requires persons requesting LTRO services and products to provide certain information to allow the LTRO to identify the property for which the service or product is being requested. There is no mandate to obtain LTRO products or services, so the requirement to provide information in support of a request for products and services is not a Federal mandate.

25 CFR Part 152

Amendments to part 152 provide tribes and individual Indians with opportunities to convey and consolidate their interests in trust or restricted land. The opportunities to convey land interests are essentially a voluntary Federal program. Therefore, the requirement does not equate to a Federal mandate.

Part 152 requires applicants to include certain information in applications for acquisitions and conveyances that are available from the LTRO. Items required under part 152 that may be available from the LTRO include:

- Maps.
- Legal description of the land.
- Title status of other interests.
- Location of roads and rights of way.
- Location of the land with respect to other lands in which the applicant has a trust interest.

However, these items are available from sources other than LTRO, so these requirements do not require applicants to obtain products from the LTRO, and therefore do not translate into Federal mandates.

25 CFR Part 179

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

43 CFR Parts 4 and 30

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

New 25 CFR Part 18 (Tribal Probate Codes)

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

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

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

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

This proposed rule does not have significant ''takings'' implications. A taking occurs when private property is taken for public use without just compensation or without due process of law. The proposed rule includes a few instances where property may be considered ''taken;'' however, just compensation is granted in each case. For example, 25 CFR part 152 allows a tribe to acquire land into trust status with the consent of only 50% of landowners, but must compensate all owners for their interests. Additionally, individual owners may preempt the tribe's right to purchase under certain circumstances. Additionally, for a consolidation by sale, the Secretary will seek only the consent of the tribe and of those owners who maintained a bona fide residence on the parcel or operated a bona fide farm, ranch or other business on the parcel for the preceding three years. Additional consent is required where any individual owner's undivided interest is worth more than $1,500 (i.e., consent of owners of at least 50% of the undivided ownership interest in the parcel). In each of these cases, even if an owner does not consent, the owner is provided with just compensation. The only other provisions of the proposed rule that may raise a question as to takings are those related to procedures for dealing with heirs or landowners whose whereabouts are unknown. However, in each of these cases, the proposed rule establishes the procedure to ensure that each individual whose whereabouts are unknown is afforded due process of law before being deprived of any specific real property interest.

F. Federalism (Executive Order 13132)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), establishes certain requirements for Federal agencies issuing regulations, among other agency documents, that have ''Federal implications.'' A regulation has ''Federal implications'' when it has ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Section 6 of the Executive Order prohibits any

agency from issuing a regulation that has Federal implications, imposes substantial direct compliance costs on state and local governments, and is not required by statute. Such a regulation may be issued only if the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or the agency consults with state and local officials early in the process of developing the proposed regulation. Further, a Federal agency may issue a regulation that has federalism implications and preempts state law only if the agency consults with state and local officials early in the process of developing the proposed regulation.

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

G. Civil Justice Reform (Executive Order 12988)

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

The Department has determined that this proposed rule will not unduly burden the judicial system. Significant portions of the proposed rule will ensure that the judicial system is not overly burdened through the establishment of an administrative appeal process. For example, amendments to 43 CFR part 4, which describes administrative processes for challenging the outcome of a probate proceeding, will streamline the probate adjudication process. Additionally, the Department has determined that the proposed rule meets the applicable standards provided in sections 3(a) and 3(b) of Executive Order 12988. The Department has incorporated ''plain language'' approaches, as described in OMB's Writing User-Friendly Topics referred to in the **Federal Register** Document Drafting Handbook. Department attorneys provided input throughout the development and drafting of these regulations to provide clear legal standards, specify preemptive effects, specify the effect on existing Federal laws and regulations, and otherwise minimize the likelihood that litigation will result from an ambiguity in the regulations.

H. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. In accordance with 44 U.S.C. 3507(d), BIA has submitted the information collection and recordkeeping requirements of this proposed rule to OMB for review and approval. Four CFR parts being proposed today contain information collection requests: 25 CFR parts 15, 18, 150 and 152. The following tables, by part, describe the information collection requirements in each section of the proposed rule and any changes from the current rule.

25 CFR Part 15

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

OMB Control Number: 1076–NEW.

Requested Expiration Date: Three years from the approval date.

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

Bureau Form Number: None.

Frequency of Collection: One per probate.

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

Total Annual Responses: 76,655.

Total Annual Burden Hours: 1,037,433.

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

Section 15.4 What are the requirements for my will?

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

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

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

The proposed rule adds a requirement for persons unable to provide a death certificate to provide as much as they know about the deceased, including: The state, city, reservation, location, date, and cause of death, the last known

address of the deceased, and names and addresses of others who may have information about the deceased. If no death certificate exists, they must provide this information in an affidavit. This information will ensure that BIA has the information it needs regarding the identity of the deceased to collect documents for the probate file. The requirement already existed to provide a death certificate or, when unable to provide a death certificate because none existed, newspaper articles, obituary, or death notices and a church or court record.

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

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

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

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

Section 15.201 Can I get funds from the decedent's IIM account for funeral services?

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

Section 15.202 If the decedent owed me money, how do I file a claim against the estate?

The proposed rule adds a requirement that creditors provide information on their claims. Specifically, the rule requires creditors to file with the Secretary an affidavit and an itemized statement of the debt, including copies of any documents (such as signed notes, mortgages, account records, billing records, and journal entries) necessary to prove the indebtedness.

The Department estimates that, on average, approximately 6 creditor claims per probate estate will be filed and that it will take creditors approximately 0.5 hours to provide this information. The most recent Paperwork Reduction Act submission purported to assume that 6 claims per probate estate would be filed, but at 5,850 probates per year, the previous assumption of 127,410 respondents appears to be erroneous. Assuming 35,100 responses (6 claims per probate estate × 5,850 probate estates), the Department estimates the burden hours = 35,100 responses × 0.5 = 17,550 burden hours. This is a decrease of approximately 46,155 hours due to a program change, with no annualized startup, or operations and maintenance costs.

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

Section 15.403 What happens after the probate decision is made?

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

Section 15.505 What information must tribes provide BIA to complete the probate file?

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

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

Old CFR section	New CFR section	Description of info collection requirement	No. of resps per yr	Hours per resp	Total hours requested (Annual)*	Currently approved hours	Explanation of difference
	15.4	File affidavit to self-prove will, codicil, or revocation.	1,000	0.5	500	0	New section requires testator affidavit to self-prove will.
	15.4	File supporting affidavit to self-prove will, codicil, or revocation.	2,000	0.5	1,000	0	New section requires witness affidavits to self-prove will.

Old CFR section	New CFR section	Description of info collection requirement	No. of resps per yr	Hours per resp	Total hours requested (Annual)*	Currently approved hours	Explanation of difference
15.101	15.104	Reporting req.-death certificate.	5,850	5	29,250	23,400	New section requires additional information where a death certificate is not provided. 3
15.106	15.201	Reporting funeral expenses.	5,850	2	11,700	11,700	No change.
15.104	15.105	Provide probate documents.	21,235	45.5	966,193	939,649	Amendments delete requirement for birth certificate, but add other requirements.
15.109		Provide disclaimer info (¼).	0	0	0	7,887	Section deleted.
15.303	15.202	File claim against estate (affidavit).	N/A	N/A	N/A	.....	
15.203	N/A	Provide response to transmittal.	0	0	0	2,972	This requirement has been deleted.
15.303	15.202	Provide info on creditor claim (6 per probate).	35,100	0.5	17,550	63,705	Decrease to reflect 6 claims per probate.
15.402	15.403	Provide info for filing appeal.	0	0	0	53,088	Now only have to file a notice of appeal; info collection requirements moved to 43 part CFR 4.
	15.505	Provide tribal information for probate file.[2].	5,620	2	11,240	0	New requirement for tribes to provide enrollment information, upon request.
Total	.....	.....	76,655	.....	1,037,433	1,094,514	

25 CFR Part 18

Title: Tribal Probate Codes.

OMB Control Number: 1076–NEW.

Requested Expiration Date: Three years from the approval date.

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

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Tribal authorities.

Total Annual Responses: 100.

Total Annual Burden Hours: 50.

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

Section 18.4 How does a tribe request approval for a probate code?

The proposed rule adds a requirement for a tribe enacting a new tribal probate code or amending an existing tribal probate code to submit the code or amendment to the Secretary or approval. The Department has estimated that, on average, approximately 100 tribes will submit new codes or amend their existing codes each year, and that it will take approximately 0.5 hours to submit the code or amendment to the Secretary = 50 burden hours. This represents an increase of 50 burden hours due to program change with no annualized startup, or operations and maintenance costs.

New CFR section	Description of info collection requirement	No. of resps per yr	Hours per resp	Total hours requested (annual)*	Currently approved hours	Explanation of difference
18.4	Submit tribal probate code or amendment.	100	0.5	50	0	New section requires submission of tribal probate code or amendment for approval.
Total	.....	100	.....	50	0	

25 CFR Part 150

Title: Indian Land Record of Title.

OMB Control Number: 1076–NEW.

Summary: This part establishes the Land Title and Records Office (LTRO) as the official record of land records and title instruments affecting Indian land. The LTRO protects ownership interests in trust and restricted Indian land by recording and maintaining title documents and providing services and products to Indians, tribes, and individuals. The proposed part 150 replaces the existing part in its entirety to provide clarification of LTRO's procedures and increase the ability of the LTRO to provide services and products to Indians, tribes, and the public. The LTRO provides access to information in the Indian Land Record of Title to members of the public, except in those instances where access would violate law or policy restricting access to such records.

Bureau Form Number: N/A.

Frequency of Collection: One per Indian, tribal authority, business or other non-profit, Federal government, or other member of the public.

Description of Respondents: Indians, tribal authorities, businesses or other non-profits, Federal government, and other members of the public.

Total Annual Responses: 12,686.

Total Annual Burden Hours: 12,696.

The following is an explanation of the information collection requirements for 25 CFR part 150 and any changes from the current rule.

Total Non-Hour Burden: $907,795.

Section 150.208 How do I correct an error or omission in a title instrument or LTRO product or service?

Section 150.208 requires persons who discover an error or omission in an LTRO record to provide the LTRO with: (1) a written description of the error or omission; and (2) any supporting documentation.

The Department estimates that a minimal number of persons and entities requesting services and products from LTRO each year will identify an error or omission in an LTRO record. Most errors and omissions are identified through an in-house quality assurance process wherein the agency filing the document with the LTRO reviews the document to identify and address errors and omissions. The Department also estimates that it will take approximately 2 hours to write a statement describing the error or omission and research, copy, and provide either via mail or in person any documentation supporting the claim that an error or omission exists.

Burden hours = 10 persons and entities identifying errors or omissions per year × 2 hours = 20 burden hours. The total burden costs based on a $18.52/hour cost estimate multiplied by the total hourly burden per year = $370.40. This represents an adjustment to account for a previously unidentified information collection request burden, with no annualized startup, or operations and maintenance costs.

Section 150.302(b) How do I order services and products from the LTRO?

The proposed revisions to part 150 provided in subsection (b) of this section include a requirement for persons requesting a product or service from the LTRO to identify the property in which they are interested by providing one of the following: (1) A legal description of the property; (2) an identification number for the tract; or (3) the identification number of the owner of the tract. The provision does not require that this information be provided in any specific form. The anticipated respondents include individuals, tribes, governmental agencies, and oil, gas, and title abstract companies.

Each of the LTRO's products and services is provided with respect to a specific tract or tracts or property. In nearly all cases, the Bureau of Indian Affairs or the tribal agency requests a service or product from the LTRO on behalf of the individual or entity. These estimates include agency requests on behalf of the member of the public.

The Department estimates that 6,338 persons or entities request services and products from LTRO approximately 2 times each year, for a total of 12,686 requests. Persons who own an interest in the land for which they are requesting a service or product will usually have a legal description or identification number readily available. For example, most new heirs will have a legal description of the property in which they are interested from the inventory of the probated estate. If the person received the property by deed, then the agency would have provided the person with a deed. However, for persons who are not co-owners in the property, this information may be more difficult to obtain; therefore, the Department estimates that the person or entity will be unable to provide this information for approximately half of the total requests for LTRO products or services each year. (See section 150.302(c), which provides applicants with the option of providing alternate information). For this reason, the Department estimates that 3,169 persons or entities (one half of the total 6,338 respondents) will request services and products from LTRO approximately 2 times per year and provide the information requested in this section, rather than provide the alternate information permitted by section 150.302(b), for a total of 6,338 responses. The Department is using 1 hour as an average baseline estimate for the time it will take to obtain information necessary to identify the tract of property for which they are requesting the product or service and provide that information to the LTRO either by mail or in person. This average incorporates the longer time (generally 4–8 hours) to survey to obtain an initial legal description, as well as the shorter time (0.5 hours) it takes to obtain the identification number or other identifying information for instruments that have already been recorded.

Burden hours therefore equal 6,338 requests (3,169 persons or entities requesting products or services 2 times a year) × 1 hour per request = 6,338 burden hours. The total burden costs based on a $18.52/hour cost estimate multiplied by the total hourly burden per year = $117,380. This represents an adjustment to account for a previously unidentified information collection request burden, with no annualized startup costs. Operations and maintenance costs in the form of fees are estimated to be $453,897.50 (one half of the total fees $907,795).

Section 150.302(c) How do I order services and products from the LTRO?

The proposed revisions to part 150 provided in subsection (c) of this section include a requirement for persons requesting LTRO products or services to provide alternate information to identify the property if they are unable to provide the information listed in section 150.302(b). Section 150.302(c) allows the applicant to submit any other information that the LTRO may use to identify an owner of the tract of land, including but not limited to: name and tribal affiliation of an owner, the recording number of the instrument, or an allotment number.

Because this information is alternate information, the Department estimates that of the estimated 6,338 persons and entities requesting services and products from the LTRO 2 times each year, 3,169 will be unable to provide the information required by section 152.302(b), and therefore submit the information in section 150.302(c). The Department also estimates that it will take approximately 1 hour to obtain and provide information necessary to identify the tract of property for which they are requesting the product or service. Burden hours = 3,169 requests (3,169 persons and entities × 2 times per year) × 1 hour = 6,338 burden hours. The total burden costs based on a $18.52/hour cost estimate multiplied by the total hourly burden per year = $117,380. This represents an adjustment to account for a previously unidentified information collection request burden, with no annualized startup costs. Operations and maintenance costs in the form of fees are estimated to be $453,897.50 (one half of the total fees $907,795).

New CFR section	Description of info collection requirement	No. of respondents (annual)	Responses per respondent (annual)	Hourly burden per response	Total hourly burden (annual)*	Explanation of difference
150.208	Provide written description and supporting documentation of error or omission.	10	1	2	20	Adjustment to account for previously unidentified burden.
150.302(b)	Provide information to identify property when requesting product or service.	3,169	2	1	6,338	Adjustment to account for previously unidentified burden.
150.302(c)	Provide other information if information in 150.302(b) is not available.	3,169	2	1	6,338	Adjustment to account for previously unidentified burden.
Responses		12,686			12,696	

25 CFR Part 152

Title: Conveyances of Trust or Restricted Land; Removal of Trust or Restricted Status.

OMB Control Number: 1076–NEW.

Summary: This part contains the procedures that the Secretary of the Interior follows to review and approve of conveyances of Indian trust and restricted land and removal of trust and restricted status from Indian land. The Secretary must perform the information collection requests in this part to obtain the information necessary to complete the requested transaction. An ''Application for Consolidation by Sale'' form must be submitted to apply for consolidations by sale. Responses to these information collection requests are required to obtain benefits (*e.g.*, complete the requested transaction).

Bureau Form Number: There is a form, but no number.

Frequency of Collection: Occasional.

Description of Respondents: Indians and tribal authorities.

Total Annual Responses: 1,250.

Total Annual Burden Hours: 2,103.

The following is an explanation of the information collection requirements for 25 CFR part 152 and any changes from the current rule.

Section 152.3 Will the Secretary provide ownership information?

This section provides that certain persons, listed in section 152.4, may request the Land Title and Records Office (LTRO) to provide the names and mailing addresses of owners of a parcel of trust or restricted lands, the location of the parcel, and the percentage of undivided interest owned by each individual by providing a written request containing:

- A legal description or other information allowing the parcel to be identified; and
- A description of how the applicant meets the requirements of 152.4 (i.e., that the applicant is an owner of a parcel of trust or restricted land on the same reservation, the tribe that exercises jurisdiction over the parcel, a person eligible for membership in the tribe that exercises jurisdiction over the parcel, or a person or entity that is leasing, using, consolidating—or applying to lease, use, or consolidate trust or consolidated lands on that reservation).

The Department estimates that 200 persons and tribes each year will request the above LTRO information and that it will take approximately 0.5 hours to compile and provide the information and draft and provide the written request.

Burden hours = 200 persons and tribes requesting LTRO information × 0.5 hours = 100 total burden hours, at $15/hour for a cost to the public of $1,500. This represents a program change, with no annualized startup, or operations and maintenance costs.

Section 152.102 What must a land consolidation plan include?

A tribal consolidation plan is a plan for eliminating fractionation and/or consolidating tribal land holdings, that specifies what land or interests are to be conveyed and what land or interests are to be purchased with the proceeds of the sale. Under section 152.105, in order for the Secretary to take action on the plan, the tribe must submit the plan to the Secretary for approval. The Department estimates that 50 tribes will prepare a consolidation plan each year, and that it will take 5 hours for each tribe to prepare the plan.

Burden hours = 50 tribes × 5 hours = 250 total burden hours, at $15/hour for a cost to the public of $3,750. This represents a program change, with no annualized startup, or operations and maintenance costs.

Section 152.105 How does a tribe receive approval for a sale or exchange under a land consolidation plan?

This section requires a tribe requesting a sale or exchange pursuant to an approved tribal land consolidation plan to submit a tribal resolution to the Secretary. Tribes prepare tribal resolutions as a usual and customary business practice. However, the following estimates capture how long it would take the tribe to copy and provide the resolution to the Department. The Department estimates that, each year, 50 tribes with consolidation plans will request an average of 2 sales or exchanges, and that it will take 0.60 hours to provide a tribal resolution in support of each sale or exchange.

Burden hours = 50 tribes × 2 sales and exchanges × 0.60 hours = 60 total burden hours, at $15/hour for a cost to the public of $900. This represents a program change, with no annualized startup, or operations and maintenance costs.

Section 152.107 In the absence of an approved land consolidation plan, how does a tribe get approval for an exchange of tribal land?

This section requires a tribe requesting a sale or exchange in the absence of an approved tribal land consolidation plan to submit a tribal resolution to the Secretary. The Department estimates that, each year, 100 tribes without consolidation plans will request an average of 1 sale or exchange, and that it will take 0.60 hours to provide a tribal resolution in support of each sale or exchange.

Burden hours = 100 tribes × 1 sale or exchange × 0.60 hours = 60 total burden hours, at $15/hour for a cost to the public of $900. This represents a program change, with no annualized startup, or operations and maintenance costs.

Section 152.206 How does an owner initiate a negotiated sale, gift, or exchange?

This section requires an owner to submit to the Secretary a written request for negotiated sale, gift, or exchange containing various items of information,

including: a description of the land, the grantee and his or her tribal affiliation, any limitations known by the grantor of the right to convey, any intention to reserve rights to the land, whether the owner waives his right to fair market value, and the terms of the sale, gift, or exchange. The Department estimates that 200 tribal and individual Indian owners will request a negotiated sale, gift, or exchange each year, at an average of one request per person, and that it will take 4.2 hours to make a request in compliance with this section.

Burden hours = 200 tribes/individual Indian owners × average of 1 request per person × 4.2 hours = 840 total burden hours, at $15/hour for a cost to the public of $12,600. This represents a program change, with no annualized startup, or operations and maintenance costs.

Section 152.217 When can a co-owner acquire an interest previously acquired on behalf of a tribe?

Subsection (b) of this section provides that a co-owner may request notification when a tribe initially acquires interest in a given tract under the Indian Land Consolidation Program. The response to this request will facilitate the owner's ability to exercise the purchase option. The Department estimates that 50 owners will request notification each year and that it will take 0.25 hours to provide the request and contact information to allow the Department to notify the co-owner when appropriate.

Burden hours = 50 co-owners who will request notification x 1 request per co-owner x 0.25 hours = 12.5 total burden hours, at $15/hour for a cost to the public of $188 (rounded up from $187.5). This represents a program change, with no annualized startup, or operations and maintenance costs.

Section 152.219 How does a transaction affect collection of construction costs for irrigation projects?

Subsection (b) of this section provides that if land is conveyed in fee, the person acquiring the land in fee must enter into an agreement to pay the pro rata share of the construction project chargeable to the land, all construction costs that accrue in the future, and all future charges assessable to the land based on the annual cost of operations and maintenance of the irrigation system. The Department estimates that 200 persons will acquire trust or restricted land in fee and that it will take 1 hour to enter into the required agreement.

Burden hours = 200 persons acquiring land in fee status × 1 request per person × 1 hour = 200 total burden hours, at $15/hour for a cost to the public of $3,000. This represents a program change, with no annualized startup, or operations and maintenance costs.

Section 152.303 How does a tribe apply for a parcel purchase?

This section requires tribes who want to initiate a tribal parcel purchase to submit an application including various items of information, including: an appraisal which establishes the fair market value of the parcel as of the date the application is filed; a certified title report and/or consent forms from the owners, reflecting that the applicant has either acquired at least 50% of the trust or restricted interests in the parcel or obtained the consent of the owners of at least 50% of such interests; and a deposit of the purchase funds needed to compensate the owners of all of the outstanding trust or restricted interests in the parcel, based on the applicant's appraisal. The Department estimates that 50 tribes each year will apply for a tribal parcel purchase and that it will take, on average, approximately 2 hours for each to provide the necessary applicant and tract information. The remaining components of the application are provided by either the Bureau of Indian Affairs or the Office of the Special Trustee for American Indians.

Burden hours = 50 tribes × 1 application per tribe × 2 hours = 100 total burden hours, at $15/hour for a cost to the public of $1,500. This represents a program change, with no annualized startup, or operations and maintenance costs.

Section 152.403 How do I apply to consolidate a parcel by sale?

This section allows eligible bidders to apply to the Secretary for approval on the Bureau form, ''Application for Consolidation by Sale,'' to consolidate interests in a highly fractionated parcel by selling interests to one owner. The Department estimates that 100 eligible bidders will apply for a consolidation by sale each year, at an average of one application per eligible bidder, and that it will take 0.5 hours to prepare the application for consolidation by sale.

Burden hours = 100 eligible bidders × 1 application per eligible bidder × 0.5 hours = 50 total burden hours, at $15/hour for a cost to the public of $750. This represents a program change, with no annualized startup, or operations and maintenance costs.

Section 152.412 How does a tribe reserve its right to match the highest bid?

This section allows tribes to match the highest bid from a non-member of the tribe by submitting a copy of the tribal law or resolution to the Secretary. The Department estimates that 50 tribes will request the opportunity to match the highest bid to buy property, at an average of one request per tribe, each year, and that it will take 0.60 hours to prepare the resolution in support of the request.

Burden hours = 50 tribes × 1 request per tribe × 0.6 hours = 30 total burden hours, at $15/hour for a cost to the public of $450. This represents a program change, with no annualized startup, or operations and maintenance costs.

Section 152.503 How can an owner initiate a partition action?

This section allows owners of fractional interests in a parcel to apply to the Secretary for partition of the parcel in order to consolidate interests in a smaller parcel. The application for partition must contain the legal descriptions, appraisals, and ownerships of the tract to be partitioned with smaller resulting tracts. The Department estimates that 50 owners each year will submit an application for partition, at an average of one application per owner, and that, on average, it takes approximately 2 hours to provide the necessary applicant and tract information. The Bureau of Indian Affairs provides the remaining information necessary for the transaction, including the legal description and the owners of the tract, while the Office of Appraisal Services provides the appraisal.

Burden hours = 50 tribes × 1 application per tribe × 2 hours = 100 total burden hours, at $15/hour for a cost to the public of $1,500. This represents a program change, with no annualized startup, or operations and maintenance costs.

Section 152.602 How do owners submit an application for approval of a mortgage or deed of trust?

This section allows the owner of the proposed mortgagee or beneficiary to submit an application for approval of a mortgage or deed of trust containing the executed mortgage or deed of trust, the promissory note, other documents regarding remedy in the case of default, an appraisal, the loan application, a credit report, title reports, and any necessary environmental or historic preservation documentation. The

Department estimates that 100 owners will request a mortgage or deed of trust, at an average of one request per owner, and that it will take approximately 3 hours to complete the application.

Burden hours = 100 owners × 1 application per owner × 3 hours = 300 total burden hours, at $15/hour for a cost to the public of $4,500. This represents a program change, with no annualized startup, or operations and maintenance costs.

New CFR section	Description of info collection requirement	No. of resps per yr	Hours per resp	Total hours requested (Annual)*	Currently approved hours	Explanation of difference
152.3	Request for information on parcel owners.	200	0.5	100	0	Program change.
152.102	Tribal land consolidation plan	50	5	250	0	Program change.
152.105	Tribal resolution requesting sale or exchange.	100	0.0160	60	0	Program change.
152.107	Tribal resolution in absence of land consolidation plan.	100	0.60	60	0	Program change.
152.206	Negotiated sale, gift, or exchange.	200	4.2	840	0	Program change.
152.217(b)	Request for notice of tribal acquisition.	50	0.25	12.5	0	Program change.
152.219(b)	Agreement for payments with fee conveyance.	200	1	200	0	Program change.
152.303	Tribal parcel purchase	50	2	100	0	Program change.
152.403	Consolidation by sale application.	100	0.5	50	0	Program change.
152.412	Copy of tribal law or resolution stating intent to match high bid.	50	0.60	30	0	Program change.
152.503	Partition	50	2	100	0	Program change.
152.602	Mortgage or Deed of Trust	100	3	300	0	Program change.
Total		Responses = 1,250.		2,103	0	

The Department invites comments on the information collection requirements of this proposed rule. You may submit comments to the Desk Officer for the Department of Interior by e-mail at *OIRA_DOCKET@omb.eop.gov* or by facsimile at (202) 365–6566. Please also send a copy of your comments to BIA at the location specified under the heading **ADDRESSES**.

You can receive a copy of BIA's submission to OMB, including a copy of the form related to 25 CFR section 152.403, by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section, or by requesting the information from the BIA Information Collection Clearance Officer, 625 Herndon Parkway, Herndon, VA 20970.

Comments should address: (1) Whether the collection of information is necessary for the proper performance of the Program, including the practical utility of the information to the BIA; (2) the accuracy of the BIA's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Organizations and individuals who submit comments on the information collection requirements should be aware that the Department keeps such comments available for public inspection during regular business hours. If you wish to have your name and address withheld from public inspection, you must state this prominently at the beginning of any comments you make. The Department will honor your request to the extent allowable by law. We may withhold the information for other reasons.

I. National Environmental Policy Act (NEPA)

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to perform an environmental assessment or environmental impact statement for all ''major Federal actions.'' This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required because any environmental effects of this rule are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Further, the Federal actions under the proposed rule (e.g., approval or disapproval of leases of Indian lands), where they qualify as ''major Federal actions,'' will be subject to the NEPA process at the time of the action itself, either collectively or case-by-case.

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

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' Executive Order 13175 (59 FR 22951, November 6, 2000) and 512 DM2, we have evaluated the potential effects on Federally recognized Indian tribes and Indian trust assets and have identified potential effects. The Department has engaged tribal government representatives in developing the Fiduciary Trust Model, which served as the basis for this rulemaking, has provided tribal government representatives with advance copies of this proposed rule, and provides additional notice to tribal government through this **Federal Register** notice. Subsequently, the Department will follow Departmental protocols for consulting with tribal governments on this proposed rule. Specifically, the Department is planning an additional three consultation meetings to exchange information with tribes on the proposed rule and potential impacts, and plans to carefully review comments received by tribal government officials. These actions enable tribal officials and the affected tribal constituency throughout Indian country to have meaningful and timely

input in the development of the final rule, while reinforcing positive intergovernmental relations with tribal governments.

K. Energy Effects (Executive Order 13211)

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

List of Subjects

25 CFR Part 15

Estates, Indians–law.

25 CFR Part 18

Estates, Indians–lands.

25 CFR Part 150

Indians, Indians–lands.

25 CFR Part 152

Indians, Indians–lands.

25 CFR Part 179

Estates, Indians–lands.

43 CFR Part 4

Administrative practice and procedure, Claims.

43 CFR Part 30

Administrative practice and procedure, Claims, Equal access to justice, Estates, Indians, Lawyers.

For the reasons given in the preamble, the Department of the Interior proposes to amend chapter I of title 25 and part 4 of title 43 for the Code of Federal Regulations as set forth below.

Title 25—Indians

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

1. Revise part 15 to read as follows:

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

Sec.

Subpart A—Introduction

15.1 What is the purpose of this part?
15.2 What terms do I need to know?
15.3 Who can make a will disposing of trust or restricted land or trust personalty?
15.4 What are the requirements for my will?
15.5 Can I revoke my will?
15.6 Can my will be deemed revoked by the operation of the law of any state?
15.7 What is a self-proved will?
15.8 Can I make my will, codicil, or revocation self-proved?
15.9 Do affidavits for my self-proved will, codicil, or revocation have to be in a certain format?
15.10 Will the Secretary probate all the land or assets in an estate?
15.11 How does the probate process work?
15.12 What happens if assets in a trust estate may be diminished or destroyed while the probate is pending?

Subpart B—Starting the Probate Process

15.101 When should I notify BIA of a death?
15.102 Who may notify BIA of a death?
15.103 How do I begin the probate process?
15.104 Does BIA need a death certificate to prepare a probate file?
15.105 What other documents does BIA need to prepare a probate file?
15.106 Can a probate case be opened when an owner of an interest has been absent?
15.107 Who prepares a probate file?
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?

Subpart C—Obtaining Emergency Assistance and Filing Claims

15.201 Can I get funds from the decedent's IIM account for funeral services?
15.202 If the decedent owed me money, how do I file a claim against the estate?

Subpart D—Preparing the Probate File

15.301 What will BIA do with the documents that I provide?
15.302 What items must BIA include in the probate file?
15.303 When is a probate file complete?

Subpart E—Probate Processing and Distributions

15.401 What happens after BIA prepares the probate file?
15.402 What happens after the probate file is referred to OHA?
15.403 What happens after the probate decision is made?

Subpart F—Information and Records

15.501 How can I find out the status of a probate?
15.502 Who owns the records associated with this part?
15.503 How must records associated with this part be preserved?
15.504 Who may inspect these records?
15.505 What information must tribes provide BIA to complete the probate file?
15.506 How does the Paperwork Reduction Act affect this part?

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410; 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; Funds of deceased Indians other than the Five Civilized Tribes, see title 25 Code of Federal Regulations, part 115.

Subpart A—Introduction

§ 15.1 What is the purpose of this part?

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

§ 15.2 What terms do I need to know?

As used in this part:

Act means the Indian Land Consolidation Act and its amendments, including Public Law 108–374, the American Indian Probate Reform Act of 2004 (AIPRA).

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

Agency means:

(1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust financial assets; 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 a licensed 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 includes any 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), by which a decedent's heirs and devisees consolidate interests in trust or restricted land, entered during the probate process, approved by the judge, and implemented by the probate order.

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

Day means a calendar day, unless otherwise stated.

Decedent means a person who is deceased.

Decision or order (or decision and order) means 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. Decision or order also means the decision issued by an attorney decision maker in a summary probate proceeding.

Department or DOI means the Department of the Interior.

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

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

Eligible heir means for the purposes of the Act, 25 U.S.C. 2206, 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 parcel from the decedent.

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

Form OHA–7 means a form (or an automated database equivalent) used by BIA to record data for heirship and family history, including but not limited to information on any wills, trust and restricted land, marriages, births, deaths, adoptions, and names and addresses of all interested parties.

Formal probate proceeding means a trial-type 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 trust or restricted land or trust personalty from a decedent in an intestate proceeding.

I means, in question headings, an heir, a devisee, an owner of trust or restricted land or trust personalty, or a creditor.

Individual Indian Money (IIM) account means funds held in trust in an individual Indian money (IIM) account by OST or by a tribe performing this function under a contract or compact. These funds also are defined as the ''trust personalty.''

Indian means, for the purposes of the Act, 25 U.S.C. 2206:

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

(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 a licensed attorney, employed by OHA, other than an ALJ, to whom the Secretary has delegated the authority to hear and decide Indian probate cases under 5 U.S.C. 556(b).

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 the decedent died without a valid will.

Judge means an administrative law judge (ALJ) or Indian probate judge (IPJ).

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 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 funds; 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 the funds or land.

Probate staff means a DOI or tribal employee who is trained in probate matters and who is responsible for preparing the probate file.

Purchase option at probate refers to 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 subpart 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. The authorized representative of the Secretary for the performance of probate functions is BIA. The authorized representative for adjudication of probate is OHA.

Summary probate proceeding means the consideration of a probate file without a hearing and on the basis of the probate file received from BIA. A summary probate proceeding may be conducted if the estate involves only trust personalty and does not exceed the amount of $5,000 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 the decedent executed a valid will.

Trust personalty means all funds and securities of any kind which 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, for which the United States holds the title to the property in trust 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. The Secretary may change the designation of the authorized representative at any time.

Will means a written document executed with the required formalities and intended to pass the testator's property upon death.

You means, in regulatory text, an heir or devisee or owner of trust or restricted property or trust personalty, unless a specific section defines ''you'' to have another meaning.

§ 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 my will?

You must date and execute your will in writing and have it attested by two disinterested adult witnesses.

§ 15.5 Can 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 Can my will be deemed revoked by operation of the law of any state?

No will that is subject to the regulations of this subpart will be deemed to be revoked by operation of the law of any State.

§ 15.7 What is a self-proved will?

A self-proved will employs an affidavit, attached to the will, 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. Using an affidavit executed at the same time as the will avoids the need for the testimony of the will witnesses at probate to prove the execution of the will.

§ 15.8 Can 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 executed as provided in § 15.4 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 make these affidavits before an officer authorized to administer oaths, and the affidavits must be attached to the will.

§ 15.9 Do affidavits for my self-proved will, codicil, or revocation have to be in a certain format?

Yes, the affidavits of the testator and attesting witnesses must be in substantially the following form and content.

(a) Format for testator's affidavit:

Tribe of _____ or
State of _____
County of _____ ss.
I, _____, being first duly sworn, on oath, depose and say: That I am an _____ (enrolled or unenrolled) member of the _____ Tribe of Indians in the State of _____; that on the __ day of __ , 20__, that I requested _____ and _____ to act as witnesses thereto; that I declared to said witnesses that said instrument was my last will and testament; that I signed said will in the presence of both witnesses; that they signed the same as witnesses in my presence and in the presence of each other; that said 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 said will as my free and voluntary act and deed for the purposes therein expressed.

_____
Testator

(b) Format for attesting witnesses' affidavit:

We, _____ and _____, each being first duly sworn, on oath, depose and state: That on the __ day of __, 20__, __, a member of the _____ Tribe of Indians of the State of _____, published and declared the attached instrument to be his/her last will and testament, signed the same in the presence of both of us, and requested both of us to sign the same as witnesses; that we, in compliance with his/her request, signed the same as witnesses in his/her presence and in the presence of each other; that said testator was not acting under duress, menace, fraud, or undue influence of any person, so far as we could ascertain, and in our opinion was mentally capable of disposing of all his/her estate by will.

_____
Witness

_____
Witness

Subscribed and sworn to before me this__day of __, 20__, by _____ testator, and by _____ and _____, attesting witnesses.

_____

_____
(Title)

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

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

(b) We will not probate the following property:

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

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

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

(c) We will probate that part of the estate of a deceased member of the Five Civilized Tribes or Osage Nation who owns a trust interest in land or a restricted interest in land derived from an individual Indian other than the Five Civilized Tribes or Osage Nation.

§ 15.11 How does the probate process work?

The basic steps of the probate process are:

(a) We find out about a person's death (see subpart B of this part for details);

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

(c) We refer the completed probate file to OHA for assignment to a judge or ADM (see subpart D of this part 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 of this part 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 entitled to trust or restricted property; and

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

(b) The interested party or BIA may:

(1) Request the immediate assignment of a judge or ADM for the probate case;

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

(3) Request an expedited hearing or consideration of ex parte relief to prevent impending or further loss or destruction of trust assets.

(c) The Superintendent or other authorized representative of BIA is granted the standing necessary to request relief under this section.

Subpart B—Starting the Probate Process

§ 15.101 When should I notify BIA of a death?

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 and if the decedent meets the criteria in § 15.3, we will initiate the process to collect the necessary documentation.

§ 15.102 Who may notify BIA 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 to inform us of the decedent's death:

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

(b) Any BIA agency or regional office;

(c) The tribe where the decedent was enrolled; or

(d) The Trust Beneficiary Call Center at (888) 678–6836 ext. 0.

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

(a) We require a certified copy of the death certificate if a certified copy exists. If necessary, we will make a copy from your certified copy for our use and return your copy.

(b) If a certified copy of the death certificate does not exist, you must provide as much information as you can concerning the deceased, such as:

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

(2) The last known address of the deceased; names and addresses of others who may have information about the deceased; and any other information available concerning the deceased, such as newspaper articles, obituary, or death notices or a church or court record.

(c) If no certified copy of a death certificate exists, we require an affidavit stating as much of the information set forth in paragraph (b) of this section as is available, as well as any other information available concerning the decedent.

§ 15.105 What other documents does BIA 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) Social Security number of the decedent;

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

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

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

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

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

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

(1) Marriage licenses 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) Order requiring payment of child support or spousal support.

§ 15.106 Can a probate case be opened when an owner of an interest has been absent?

(a) A probate case may be opened when 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 six years.

(b) When we receive that information, we will begin an investigation into the unexplained absence, and will attempt to locate the absent person. We may:

(1) Search available electronic databases;

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

(3) Examine BIA land title and lease records;

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

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

(c) When we have completed our investigation, if we are unable to locate the absent person, we will open a probate case and prepare a file that will 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 probate staff at the agency or tribe where the decedent is an enrolled member will prepare the probate file in consultation with the potential heirs or devisees who can be located, and with other people with 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 either:

(a) Was not an enrolled member of a tribe but owns interests in trust or restricted land or trust personalty; or

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

Subpart C—Obtaining Emergency Assistance and Filing Claims

§ 15.201 Can I get funds from the decedent's IIM account for funeral services?

(a) You may ask us for up to $1,000 from the decedent's IIM account in the following situations:

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

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

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

(b) You must apply for assistance 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 up to $1,000 that are necessary for the burial services, taking into consideration:

(1) The total amount in the account;

(2) The number of potential heirs or beneficiaries of whom BIA is aware;

(3) The amount of any claims against the account of which BIA is aware;

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

(5) Any other relevant factor.

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

§ 15.202 If the decedent owed me money, how do I file a claim against the estate?

If a decedent owed you money, you can make a claim against the estate of the decedent before the probate file is transferred to OHA. To do this, you may submit to us an affidavit under oath of the debt alleged and an itemized statement of the debt, including copies of any documents (such as signed notes, mortgages, account records, billing records, and journal entries) necessary to prove the indebtedness. You may also file your claim as a creditor with OHA

after the probate file has been transferred and pending adjudication has not been completed if you comply with 43 CFR 30.140–30.148.

(a) The itemized statement must show the amount of the original debt and the remaining balance on the date of the decedent's death.

(b) The affidavit must state whether you have filed a claim or sought reimbursement against the decedent's non-trust assets and whether you have filed a claim for the same debt in any other judicial or quasi-judicial proceeding.

(c) Secured creditors must first exhaust the security before submitting a claim against trust personalty for any deficiency. Submit a certified copy of a judgment of a court of competent jurisdiction determining the deficiency.

(d) File your claim before the conclusion of the first hearing or, for cases designated as summary probate proceedings, as allowed under 43 CFR 30.202. Claims not filed by then will be barred forever.

Subpart D—Preparing the Probate file

§ 15.301 What will BIA 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 you may provide to prepare a complete probate file. We will consult with you and any other sources to obtain additional information to complete the probate file. Then we will transfer the probate file to OHA.

§ 15.302 What items must BIA include in the probate file?

BIA must query available sources of information to locate and include the following items in the probate file:

(a) The evidence of death of the decedent as provided by § 15.104;

(b) A completed Form OHA–7, ''Data for Heirship Findings and Family History,'' certified by BIA, with the enrollment or other identifying number shown for each potential heir or devisee, if such number has been assigned;

(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;

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

(3) If an individual only qualifies as an Indian 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;

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

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

(2) All encumbrances on the land, including but not limited to leases, mortgages, and rights of way;

(3) Identification of any interests that represent less than 5% of the undivided interest in a parcel; and

(4) Identification of all income generating activity, such as leases or rights of way and any assignments of such income;

(e) A statement showing the balance of the decedent's IIM account at the date of death;

(f) A statement showing all disbursements from the decedent's IIM account after the date of death;

(g) Originals or copies of all wills, codicils, and revocations;

(h) A copy of any statement or document concerning any wills, codicils or revocations we have returned to the testator;

(i) 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;

(j) Claims of creditors, including documentation required by § 15.202;

(k) Documentation of any payments made on claims filed under the provisions of § 15.201;

(l) All the documents acquired under § 15.105;

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

(n) 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; and

(o) An affidavit by the probate staff, if applicable, certifying that the Department has complied with 25 U.S.C. 2201 et seq in attempting to locate missing potential heirs and devisees and identifying the steps that were taken.

§ 15.303 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 § 15.302 that is available; and

(b) Lists all sources of information BIA queried in an attempt to locate information listed in § 15.302 that is not available.

Subpart E—Probate Processing and Distributions

§ 15.401 What happens after BIA prepares the probate file?

After we assemble all the documents required by § 15.302, our probate staff will:

(a) Refer the case to OHA for assignment to a judge or ADM; 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 Indian Land Consolidation Office and to the tribes with jurisdiction over those interests.

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

(a) 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 and an order, in accordance with 43 CFR part 4, subpart D.

(b) If BIA receives any claims from creditors after the probate file is transmitted to OHA, but before the order is issued, BIA must promptly transmit those claims to OHA.

§ 15.403 What happens after the probate decision is made?

Once the probate decision is made:

(a) You have 30 days from the decision or order mailing date to file a written request for a de novo review, a request for rehearing or an appeal, in accordance with 43 CFR part 30;

(b) When you file 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; and

(c) If no interested party timely files a request or appeal, we will wait at least 10 days after the 30 day period stated in paragraph (a) of this section before paying claims, transferring title to land, or distributing trust personalty, then:

(1) The LTRO will change its 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 the IIM account in accordance with the final decision or order.

Subpart F—Information and Records

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

You may contact any BIA agency or regional office, an OST fiduciary trust

officer or the Trust Beneficiary Call Center at (888) 678–6836 ext. 0, to get information about the status of an Indian probate.

§ 15.502 Who owns the records associated with this part?

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

(1) Are made by or on behalf of the United States;

(2) Are 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 Public Law 93–638 as amended; and

(3) 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.

(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.

§ 15.504 Who may inspect these records?

The records and records management practices and safeguards required under the Federal Records Act are subject to inspection by BIA and the Archivist of the United States.

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

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

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

The collections of information contained in §§ 15.4, 15.104, 15.105, 15.201, 15.202, 15.403, 15.505 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–xxxx. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to a collection of information unless the form or regulation requesting the information has a currently valid OMB Control Number.

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

PART 18—TRIBAL PROBATE CODES

Sec.

18.1 May a tribe adopt its own probate code?
18.2 When does a code require our approval?
18.3 What will you consider in the approval process?
18.4 How does a tribe request approval for a probate code?
18.5 When will you approve or disapprove a probate code or amendment?
18.6 What happens if the probate code or amendment is approved?
18.7 How is a tribe notified of a disapproval?
18.8 When will a tribal probate code become effective?
18.9 What will happen if a tribe repeals its probate code?
18.10 How does the Paperwork Reduction Act affect this part?

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

§ 18.1 May a tribe adopt its own probate code?

(a) A tribe may adopt a probate code to govern descent and distribution of trust and restricted lands located within the tribe's reservation or otherwise subject to the tribe's jurisdiction. The code may include:

(1) Rules of intestate succession; and

(2) Other provisions consistent with Federal law that promote the policies in § 18.3.

(b) A tribe may adopt a single heir rule for intestate succession specifying a recipient other than the one provided by 25 U.S.C. 2206(a)(2)(D).

§ 18.2 When does a code require our approval?

Only those tribal probate codes that govern the descent and distribution of trust and restricted lands require our approval.

§ 18.3 What will you consider in the approval process?

We will consider the following in determining whether to approve a tribal probate code:

(a) 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;

(b) The tribal probate code must allow:

(1) An Indian lineal descendant of the original allottee to inherit; and

(2) An Indian who is not a member of the Indian tribe with jurisdiction over the interest in land to inherit; and

(c) A tribe may limit the individuals in paragraphs (b)(1) and (2) of this section if the code:

(1) Allows those individuals to renounce their interests to eligible devisees in accordance with the tribal code;

(2) Allows a devisee spouse or lineal descendant of the testator or of the original allottee to reserve a life estate without regard to waste; and

(3) Allows for the payment of fair market value as determined by us on the date of the decedent's death.

§ 18.4 How does a tribe request approval for a probate code?

(a) To begin the approval process for either a tribal probate code or amendment to the code, the tribe must submit to the local Bureau Official as defined in 25 CFR 82.1(h):

(1) Its probate code or an amendment to an existing code; and

(2) A duly executed tribal resolution adopting the code or the amendment.

(b) The local Bureau Official will make sure that a complete copy of the code and the resolution is submitted to the Assistant Secretary—Indian Affairs for approval.

§ 18.5 When will you approve or disapprove a probate code or amendment?

(a) We have 180 days from submission of a complete package to the local Bureau Official to approve or disapprove a tribal probate code.

(b) We have 60 days from submission of an amendment of the tribal probate code to approve or disapprove the amendment.

(c) If we do not meet the deadlines in paragraphs (a) or (b) of this section, the tribal probate code or the amendment to the 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 § 18.3.

§ 18.6 What happens if the probate code or amendment is approved?

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:

(1) Notify the tribe of the approval and forward a copy of the code or amendment to the Office of Hearings and Appeals; and

(2) Publish a notice of the date of the approval in the **Federal Register**.

§ 18.7 How is a tribe notified of a disapproval?

If we disapprove a tribal probate code or amendment, we must provide the tribe with a written notification of the disapproval that includes:

(a) An explanation of the reasons for the disapproval; and

(b) Notification that the tribe may appeal the disapproval directly to the Interior Board of Indian Appeals under 25 CFR part 2.

§ 18.8 When will a tribal probate code become effective?

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

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

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

(a) If a tribe repeals its tribal probate code, the repeal:

(1) 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

(2) Will apply only to the estate of a decedent who dies on or after the effective date of the repeal.

(b) We will:

(1) Forward a copy of the repeal to the Office of Hearings and Appeals; and

(2) Publish a notice of the date of repeal in the **Federal Register**.

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

The collection of information contained in § 18.4 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076-xxxx. 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.

3. Revise part 150 to read as follows:

PART 150—INDIAN LAND RECORD OF TITLE

Subpart A—Purpose, Definitions, and Public Information

Sec.
150.1 What is the purpose of this part?
150.2 What terms do I need to know?
150.3 When can I see land and title information from the Indian Land Record of Title?
150.4 Do I have to be an Indian or a tribe to obtain products or services from the Land Titles and Records Office?

Subpart B—The Indian Land Record of Title Designation as the Official Record of Indian Land

150.101 Must all title instruments affecting Indian land be recorded in the Indian Land Record of Title?
150.102 Do I have to check with any other governmental office to find title instruments to Indian land?

Subpart C—LTRO Procedures and Requirements to Record Instruments in the Indian Land Record of Title

150.201 Who maintains the Indian Land Record of Title?
150.202 Where is the LTRO located?
150.203 Who submits the title instruments for recording?
150.204 What does the LTRO do with the instruments it receives?
150.205 What are the minimum requirements for recording a title instrument?
150.206 What if the LTRO discovers a defect or error in a document?
150.207 What if a defect or error in a final probate record cannot be corrected?
150.208 How do I correct an error or omission in a title instrument or LTRO product or service?
150.209 What instruments qualify for recording with the LTRO?
150.210 Does the LTRO maintain the original title instruments?
150.211 May I obtain a copy of the title instrument from the LTRO?
150.212 Is there any benefit to obtaining a certified copy of the title?

Subpart D—Services and Products of the LTRO

150.301 What services and products may I order from the LTRO?
150.302 How do I order services and products from the LTRO?
150.303 Does BIA charge fees for any of the services provided by, or products produced by, the LTRO?
150.304 What will the LTRO do if the instrument contains information that is privileged or protected?
150.305 How does the Paperwork Reduction Act affect this part?

Authority: Act of June 30, 1834 (4 Stat. 738; 25 U.S.C. 9). Act of July 26, 1892 (27 Stat. 272; 25 U.S.C. 5). Reorganization Plan No. 3 of 1950 approved June 20, 1949 (64 Stat. 1262). (Act of April 26, 1906 (34 Stat. 137); Act of May 27, 1908 (35 Stat. 312); Act of August 1, 1914 (38 Stat. 582, 598) deals specifically with land records of the Five Civilized Tribes. Act of February 14, 1920 (41 Stat. 415) amended March 1, 1933 (47 Stat. 1417; 25 U.S.C. 413); 5 U.S.C. 552a; 25 U.S.C. 14b; and 31 U.S.C. 9701.

Cross-reference: For further regulations pertaining to proceedings in Indian probate, see 43 CFR part 4, subpart D, 43 CFR part 30, and 25 CFR part 15.

Subpart A—Purpose, Definitions and Public Information

§ 150.1 What is the purpose of this part?

The purpose of this part is to describe the authorities, policies, and procedures used for:

(a) Recording instruments that affect title to Indian land;

(b) Maintaining copies of title instruments;

(c) Maintaining the Indian Land Record of Title;

(d) Certifying title instruments of Indian land;

(f) Examining and determining title status;

(g) Preparing reports on the title of Indian land; and

(h) Designating the Indian Land Record of Title as the official record for instruments that affect title to Indian land.

§ 150.2 What terms do I need to know?

As used in this part:

BIA means the United States Department of the Interior Bureau of Indian Affairs.

Constructive notice means information or knowledge of a fact imputed by law to a person even if such person has no actual knowledge of the fact.

Federal government means the government of the United States.

Government offices mean the Federal, state, county, and municipal government.

Indian land means land held in trust status or restricted status, or certain Federal government land that is under the jurisdiction of BIA.

Indian Land Record of Title means the record of title instruments for Indian land under the Act of July 26, 1892, 27 Stat.272; 25 U.S.C. 5.

Instrument means a document in writing, including, but not limited to, a contract, deed, will, bond, judicial or administrative order, lease, or easement, including a map or plat.

Interest, when used with respect to Indian land, means a present or future right in trust or restricted land.

Land means real estate.

Land Titles and Records Office (LTRO) means the office within BIA that

is responsible for maintaining the Indian Land Record of Title by recording, providing custody, and certifying title instruments in its custody, and for examining and determining the completeness and accuracy of the record of interests in Indian land, certifying the findings of examination, and reporting the status of interests in Indian land. The Land Titles and Records Office, as used herein, includes tribes which have compacted or contracted to perform some Land Titles and Records functions.

Recording means the entry of the information from an instrument into the Indian Land Record of Title. Recording an instrument in the Indian Land Record of Title gives constructive notice of the instrument's existence.

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

Title means an interest, or evidence of an interest, in Indian land.

Title examination means a review and evaluation by the Land Titles and Records Office of the information in the Indian Record of Title for a particular tract of Indian land and a finding that such information is complete, accurate, and current.

Title instrument means any instrument that affects an interest in Indian land and that the law and regulations require to be approved or recorded.

Tribe means any Indian tribe, nation, band, pueblo, town, community, rancheria, colony, or other group of Indians, which is recognized by the Secretary as eligible for the special programs and services provided by the Bureau of Indian Affairs, and listed in the **Federal Register** under Public Law 103–454, act of Nov. 2, 1994 (108 Stat. 4791; 25 U.S.C. 479a).

Trust status means the United States holds title to the property in trust for the benefit of a tribe or individual Indian. Restricted status means a tribe or individual Indian holds title to the property in fee simple subject to Federal restrictions on alienation or encumbrance.

You/I means the person reading this regulation.

§ 150.3 When can I see land and title information from the Indian Land Record of Title?

(a) You may access, inspect and copy the information in the Indian Land Record of Title except where this information is subject to the Privacy Act, 5 U.S.C. 552a or other law or policy restricting access to records.

(b) Information covered by this section includes information on the location of the land, historical interests, current interests, and related documents.

(c) Owners of an interest in trust or restricted land within the same reservation, the tribe or any person that is leasing, using, or consolidating, or is applying to lease, use or consolidate, such trust or restricted land or the interest in trust or restricted lands may receive names and mailing addresses, information on the location of the parcel, and the percentage of the parcel owned by each individual, without regard to the Privacy Act and any exemption contained in the Freedom of Information Act, 5 U.S.C. 552.

(d) You do not need to make a request under the Freedom of Information Act to see records covered by this section. You may submit a request for information to any location of the Land Titles and Records Office or BIA as provided in subpart D of this part.

§ 150.4 Do I have to be an Indian or a tribe to obtain products or services from the Land Titles and Records Office?

No. Anyone may receive products and services offered by the Land Titles and Records Office (LTRO).

Subpart B—The Indian Land Record of Title Designation as the Official Record of Indian Land

§ 150.101 Must all title instruments affecting Indian land be recorded in the Indian Land Record of Title?

The Indian Land Record of Title is the official record of title instruments affecting Indian land and all title instruments must be recorded there, except as provided by other Federal statutory authority. When the LTRO records a title instrument in the Indian Land Record of Title, the public receives constructive notice that the title instrument exists. Title instruments affecting Indian land within the jurisdiction of the Five Civilized Tribes and the Osage Nation must be recorded in the county courthouse serving the county within which the land is located.

§ 150.102 Do I have to check with any other governmental office to find title instruments to Indian land?

No. The Indian Land Record of Title is the source of all recorded title instruments, except those affecting land of the Five Civilized Tribes and Osage Nation, which are recorded in the county courthouse serving the county within which the land is located.

Subpart C—LTRO Procedures and Requirements to Record Instruments in the Indian Land Record of Title

§ 150.201 Who maintains the Indian Land Record of Title?

The LTRO is the office within BIA responsible for maintaining the Indian Land Record of Title. It records title instruments affecting Indian land, certifies copies of images of the instruments in the custody of the LTRO, examines the record and certifies the findings of examinations, and provides other services and products based upon the information in the record.

§ 150.202 Where is the LTRO located?

The LTRO has locations throughout the United States. You may contact any BIA office for the current contact information.

§ 150.203 Who submits the title instruments for recording?

BIA submits most of the title instruments to the LTRO. Tribes, other government offices, and individuals may also submit instruments to the LTRO.

§ 150.204 What does the LTRO do with the instruments it receives?

(a) The LTRO reviews the instrument to ensure that it satisfies the minimum requirements for recording. If so, the LTRO:

(1) Makes a true and correct image of the instrument;

(2) Enters the information contained in the instrument affecting the status of title into the Indian Land Record of Title; and

(3) Returns the original instrument.

(b) If the instrument does not satisfy the minimum requirements, the LTRO returns the instrument with an explanation why the instrument was not accepted for recording.

§ 150.205 What are the minimum requirements for recording a title instrument?

The minimum requirements for recording an instrument include:

(a) A legal description of the Indian land;

(b) The signatures of the parties to the instrument;

(c) Proper acknowledgment of the signatures of the parties; and

(d) If required, proper Federal approval, and the approval date and authority of the Federal official.

§ 150.206 What if the LTRO discovers a defect or error in a document?

(a) If the LTRO discovers the error after the instrument is recorded, the LTRO will notify the submitting person

of the error and make a notation in the Indian Land Record of Title that an error exists.

(1) Once the interested parties correct the error and the submitting person returns an instrument evidencing the correction to the LTRO, the LTRO will record the instrument in the Indian Land Record of Title.

(2) In any subsequent title examination, the LTRO will rely upon the corrected instrument to determine the title status of the Indian land.

(b) If the LTRO discovers a defect or error in a final probate record after it has been recorded, the LTRO will issue administrative corrections to correct clerical probate errors, or to add omitted property or interest as set forth in 43 CFR 30.126. Other defects or errors will be addressed through the probate process as provided in 43 CFR part 30.

§ 150.207 What if a defect or error in a final probate record cannot be corrected?

If a defect or error in a final probate record cannot be corrected, the LTRO will notify the appropriate deciding official, as provided in 43 CFR 30.126 and 30.127, and make a notation in the Indian Land Record of Title that a possible error exists.

(a) Once the deciding official corrects the error and submits an instrument evidencing the correction to the LTRO, the LTRO will record the instrument in the Indian Land Record of Title.

(b) In any subsequent title examination, the LTRO will rely upon the corrected instrument to determine the title status of the Indian land.

§ 150.208 How do I correct an error or omission in a title instrument or LTRO product or service?

(a) To correct an error or omission, you may submit a written description of the error or omission with any supporting documentation to the approving official or to the LTRO.

(b) After receiving the description of the error, the LTRO will conduct an investigation. If the LTRO determines that there is an error or omission in the product or service, it will correct the product or service.

(1) If there is an error or omission in the information in the Indian Land Record of Title, it will correct the error or omission based upon the image or original copy of the title instrument from which it obtained the information.

(2) If there is an error or omission in the title instrument, it will follow the procedures set forth in §§ 150.206 through 150.208.

§ 150.209 What instruments qualify for recording with the LTRO?

Only title instruments qualify for recording in the Indian Land Record of Title.

§ 150.210 Does the LTRO maintain the original title instruments?

No. The LTRO returns the original instrument to the submitter.

§ 150.211 May I obtain a copy of the title instrument from the LTRO?

Yes. If the Land Titles and Records Office has recorded the information from the title instrument in the Indian Land Record of Title and has made a copy of the title instrument, you may obtain a copy of the title instrument, subject to the Freedom of Information Act and the Privacy Act considerations as described in § 150.3.

§ 150.212 Is there any benefit to obtaining a certified copy of the title?

Yes. If the LTRO certifies a copy of the title instrument, you may use the certified copy in court or elsewhere, the same as the original instrument.

Subpart D—Services and Products of the LTRO

§ 150.301 What services and products may I order from the LTRO?

You may obtain a list of services and products provided by the LTRO from the LTRO or BIA. Services include:

(a) Recording title instruments;

(b) Providing certified and uncertified copies of images of title instruments recorded in the Indian Land Record of Title; and

(c) Producing reports.

§ 150.302 How do I order services and products from the LTRO?

(a) You may submit your written request for services and products to any location of the LTRO or BIA.

(b) You must include either a legal description of the land, the identification number of the tract, or the identification number of an owner of an interest in the tract.

(c) You may submit other information that the LTRO may use to identify an owner of an interest in the tract of land, including but not limited to: name and tribal affiliation of an owner, the recording number of the instrument, or an allotment number.

§ 150.303 Does BIA charge fees for any of the services provided by, or products produced by, the LTRO?

(a) BIA charges fees for certain services and products provided by the LTRO. All persons who receive services and products from the LTRO will be assessed a fee, except as provided in paragraph (b) of this section. You may pay the fee by certified check or money order.

(1) A copy of the fee schedule is available from BIA.

(2) Contact the LTRO for an estimate of the amount of the fee for a service or product.

(3) You must pay the entire fee, or minimum fee if the fee is an hourly rate, when you request the service or the product from the LTRO. When the LTRO delivers the service or the product to you, you must pay any remaining amount according to the hourly rate.

(b) The LTRO may grant an exception under the following circumstances:

(1) If you are an individual Indian and are recording a transaction that reduces the number of owners of undivided interests in a tract of Indian land;

(2) If you are an individual Indian and are recording an instrument to transfer your undivided interest in Indian land to a tribe;

(3) If you are a tribe and recording a transaction that will consolidate the ownership interests of a tract of Indian land; or

(4) You are an agency or office within the Department of the Interior or the Department of Justice.

(c) The LTRO will charge you a minimum fee even if the LTRO is unable to provide the service or the product, unless the LTRO grants an exception under paragraph (b) of this section.

(d) The LTRO will refund your fee for any information that cannot be delivered to you because of the Privacy Act (5 U.S.C. 552a) or other law or policy restricting access to the records.

§ 150.304 What will the LTRO do if the instrument contains information that is privileged or protected?

If information is protected under the Privacy Act, or cannot be provided to you because of 5 U.S.C. 552a or another law or policy restricting access, the LTRO will:

(a) Redact the information; and

(b) Provide you with the remaining information or an altered copy of the image of the instrument.

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

The collections of information contained in §§ 150.208, 150.302(b), and 150.302(c), have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–xxxx. 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 152—CONVEYANCES OF TRUST OR RESTRICTED INDIAN LAND; REMOVAL OF TRUST OR RESTRICTED STATUS

4. The authority citation for part 152 continues to read as follows:

Authority: 25 U.S.C. 2201–2204, 2212–2216, Indian Land Consolidation Act, 97 Pub. L. 459, 96 Stat. 2515 (Jan. 12, 1983), as amended; American Indian Probate Reform Act (AIPRA) of 2004, 108 P.L. 374, 118 Stat. 1773 (Oct. 24, 2004); R.S. 161; 5 U.S.C. 301. Interpret or apply sec. 7, 32 Stat. 275, 34 Stat. 1018, sec. 1, 35 Stat. 444, sec. 1 and 2, 36 Stat. 855, as amended, 856, as amended, sec. 17, 39 Stat. 127, 40 Stat. 579, 62 Stat. 236, sec. 2, 40 Stat. 606, 68 Stat. 358, 69 Stat. 666: 25 U.S.C. 378, 379, 405, 404, 372, 373, 483, 355, unless otherwise noted.

4a. The cross references for part 152 are revised to read as follows:

Cross-references: For further regulations pertaining to the sale of irrigable lands, see parts 160, and 159 and § 134.4 of this chapter. For Indian money regulations, see parts 115, 111, 116, and 112 of this chapter. For regulations pertaining to the determination of heirs and approval of wills, see part 15 and subpart G of part 11 of this chapter.

5. Revise the heading of part 152 to read as set forth above.

6. Remove §§ 152.1 through 152.3, including the center heading preceding § 152.3.

7. Remove §§ 152.17 through 152.35, including the center headings preceding §§ 152.17, 152.33, and 152.34.

8. Redesignate §§ 152.4 through 152.8 as §§ 152.701 through 152.705.

9. Redesignate §§ 152.9 through 152.16 as §§ 152.801 through 152.808.

Subpart H—Patents in Fee, Certificates of Competency, and Orders Removing Restrictions

10. Designate §§ 152.701 through 152.705 as subpart H and add a subpart heading to read as set forth above.

Subpart I—Special Provisions Applicable to the Osage and Five Civilized Tribes

11. Designate §§ 152.705 and 152.801 as subpart I and add a subpart heading to read as set forth above.

12. Add subparts A through G to read as set forth below.

Subpart A—General Provisions

Sec.

152.1 What does this part do?
152.2 What terms do I need to know?
152.3 Will the Secretary provide ownership information?
152.4 To whom will the Secretary provide ownership information?
152.5 Which subparts do not apply to Alaska?

Subpart B—Sales and Exchanges of Tribal Trust or Restricted Land

152.101 What transactions are covered by this subpart?

Sales and Exchanges Under a Land Consolidation Plan

152.102 What must a land consolidation plan include?
152.103 Are there any restrictions on a land consolidation plan?
152.104 How does the Secretary approve a land consolidation plan?
152.105 How does a tribe receive approval for a sale or exchange under a land consolidation plan?
152.106 How may the tribe use the proceeds of a sale or exchange?

Exchanges Without a Land Consolidation Plan

152.107 In the absence of an approved land consolidation plan, how does a tribe get approval for an exchange of tribal land?
152.108 What criteria will the Secretary use to determine whether to approve an exchange?

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Subpart A—General Provisions

§ 152.1 What does this part do?

This part explains the policy and procedures for conveying trust or restricted Indian land or removing Indian land from trust or restricted status.

§ 152.2 What terms do I need to know?

As used in this part:

Fair market value means the value of an interest in land determined in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), or an alternative system we may utilize for establishing fair market value.

Family farm means land used for agricultural production owned and operated by the owner(s) and/or his immediate family. The family farm can include a house or residence.

Fee land means land or an interest in land that is not trust or restricted.

Fee status means the interest in a parcel of land is held by the owner without restrictions on alienation or encumbrance and not in trust by the United States for that owner.

Fractional interest means an undivided interest in Indian land owned in common by Indian or tribal landowners and/or fee owners.

Indian means any person who:

(1) Is a member of any federally recognized tribe or, for purposes of land transactions in Alaska, can demonstrate Alaska Native ancestry;

(2) Is eligible to become a member of any federally recognized tribe;

(3) Is a descendent of a member and said descendent was, on June 1, 1934, physically residing on a federally recognized Indian reservation;

(4) Possesses a total of one-half or more degree Indian blood;

(5) Is an owner (as of October 27, 2004) of a trust or restricted interest in land; or

(6) With respect to land in the State of California, is an owner of a trust or restricted interest in land in California.

Land consolidation plan means a tribal plan for eliminating fractionation and/or consolidating tribal landholdings.

Owner(s) means, except in subpart D of this part, the tribe or individual person or persons who are the beneficiaries of trust land or who hold title to restricted land. In subpart D of this part, owner also includes individuals and entities that hold title in fee status.

Restricted land means land or an interest therein the title to which is held by an Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations in the conveyance instrument under federal law.

Secretary/we/our/us means the Secretary of the Interior or an authorized representative.

Tribal land means tribal trust land and other tribally owned land that is subject to any general restrictions on alienation imposed by federal law.

Tribe means any Indian tribe, nation, band, pueblo, town, community, rancheria, colony, or other group of Indians, which is recognized by the Secretary as eligible for the special programs and services provided by the Bureau of Indian Affairs, and listed in the **Federal Register** under the Act of November 2, 1994 (108 Stat. 4792; 25 U.S.C. 479a–1).

Trust land means land or an interest therein that the United States holds in trust for the benefit of an Indian or a tribe.

You/I means the reader of this regulation.

§ 152.3 Will the Secretary provide ownership information?

Yes. We will provide ownership information under part 150 of this chapter to an individual or tribe interested in conveying or acquiring by negotiated sale, gift, or exchange. We will, through the Land and Title Records Office and the local BIA Agency and local Trust Officer, provide the names and mailing addresses of the owners of a parcel of trust or restricted lands, the location of the parcel, and the percentage of undivided interest owned by each owner. A request for ownership information must be in writing and must include the legal description or other identifier of the parcel and how the applicant meets the requirements of § 152.4.

§ 152.4 To whom will the Secretary provide ownership information?

Anyone may receive information under part 150 of this chapter. We will provide ownership information to:

(a) Owners, including owners holding an interest in fee status, of a parcel of trust or restricted land on the same reservation;

(b) The tribe that exercises jurisdiction over the parcel;

(c) A person eligible for membership in that tribe;

(d) Any person or entity that is leasing, using, consolidating, or applying to lease, use or consolidate trust or restricted lands on that reservation; or

(e) Anyone authorized by an individual owner to receive the information.

§ 152.5 Which subparts do not apply to Alaska?

(a) Subparts B and D of this part do not apply to Alaska.

(b) In subparts C and E of this part, the term ''tribe'' includes the Metlakatla Indian Community but does not include any other Alaska tribe.

(c) Subparts F, G and H of this part apply in their entirety to individually owned restricted lands in Alaska.

Subpart B—Sales and Exchanges of Tribal Trust or Restricted Land

§ 152.101 What transactions are covered by this subpart?

Except as provided in this subpart or as authorized by a specific act of Congress, tribal land may not be sold, exchanged, or otherwise conveyed. This subpart authorizes us to approve:

(a) Negotiated sales and exchanges of tribal land, where made under a land consolidation plan approved by us under this subpart; and

(b) Exchanges of tribal land, when the fair market value of the land being received in exchange is substantially equal to or greater than the fair market value of the tribal land being conveyed.

Sales and Exchanges Under a Land Consolidation Plan

§ 152.102 What must a land consolidation plan include?

A land consolidation plan must include:

(a) A description and map of the general area within which are located the tribal lands and interests to be conveyed, and the lands and interests to be acquired through exchange or purchased with the sale proceeds;

(b) An explanation of how the plan will facilitate the elimination of fractionation and/or the consolidation of tribal landholdings; and

(c) An appropriate supporting tribal resolution.

§ 152.103 Are there any restrictions on a land consolidation plan?

Yes. A land consolidation plan may not authorize land sales or other types of land transactions that are prohibited

by the tribe's constitution or other governing document.

§ 152.104 How does the Secretary approve a land consolidation plan?

We may approve the land consolidation plan if it is consistent with the requirements of this subpart. We will take action on the tribe's land consolidation plan (or amended plan) within 120 working days of our receiving a complete plan and supporting tribal resolution.

§ 152.105 How does a tribe receive approval for a sale or exchange under a land consolidation plan?

(a) The tribe must request Secretarial approval for each sale or exchange made under an approved land consolidation plan by submitting a tribal resolution that identifies the land(s) involved and requests Secretarial approval for the sale or exchange.

(b) Upon receiving an appropriate authorizing resolution requesting approval for a sale or exchange, we will:

(1) Prepare a conveyance instrument; and

(2) Determine fair market value.

(c) We will approve the sale or exchange of land if:

(1) The land being sold or exchanged is identified for conveyance in an approved land consolidation plan; and

(2) The tribe receives payment equal to at least 90 percent of the fair market value of the land being sold or exchanged. Such payment may include any combination of cash or land equal to or greater than the requisite percentage.

§ 152.106 How may the tribe use the proceeds of a sale or exchange?

(a) Any proceeds from any sale or exchange made under an approved tribal land consolidation plan must be:

(1) Deposited in a segregated, interest-bearing trust account established and maintained by the Secretary; and

(2) Used only for the purchase of other lands, as identified in the land consolidation plan.

(b) Any fee land purchased with the proceeds derived from any sale or exchange made under an approved land consolidation plan may be placed in trust status upon satisfying any applicable requirements in part 151 of this chapter.

Exchanges Without a Land Consolidation Plan

§ 152.107 In the absence of an approved land consolidation plan, how does a tribe get approval for an exchange of tribal land?

(a) To obtain approval for an exchange of tribal land, a tribe must submit an appropriate authorizing resolution that identifies the lands involved and requests our approval for the exchange.

(b) Upon receiving an appropriate authorizing resolution requesting Secretarial approval, we will:

(1) Prepare a conveyance instrument or approve a conveyance instrument prepared by a tribe; and

(2) Determine fair market value of the tribal land to be conveyed and of the land to be acquired in the exchange.

§ 152.108 What criteria will the Secretary use to determine whether to approve an exchange?

We will approve the exchange of land in the absence of an approved land consolidation plan only if:

(a) The land the tribe is acquiring has a fair market value equal to or greater than that of the land being conveyed, and

(b) If the land to be acquired is in fee status, the acquisition meets the requirements set forth in part 151 of this chapter.

Subpart C—Negotiated Sales, Gifts, and Exchanges of Individually Owned Lands

§ 152.201 What lands are covered by this subpart?

This subpart applies to whole or fractional trust and restricted interests in land owned by an Indian. The land can be located on or off a reservation. This subpart also applies to severed mineral interests.

§ 152.202 What transactions are covered by this subpart?

(a) Transactions covered by this part include:

(1) Negotiated sales, gifts, and exchanges, whereby a conveyance instrument is executed by or on behalf of the trust or restricted owners, subject to Secretarial approval; and

(2) Partitions accomplished by exchanges of deeds among all of the owners, rather than by application to the Secretary under subpart F of this part.

(b) The following transactions are not covered by this subpart:

(1) Conveyances made by the Secretary without the consent of all of the owners; and

(2) Conveyances or purchases made during a probate of trust or restricted land.

§ 152.203 Who may convey an interest in trust or restricted land?

(a) Unless otherwise prohibited by law, the following individuals or entities may convey an interest in trust or restricted land with the approval of the Secretary:

(1) Any individual owner 18 years of age or older may convey his or her interest;

(2) Guardians, conservators, or other fiduciaries who are appointed by a court of competent jurisdiction and who have been granted the authority to convey, may convey trust or restricted land belonging to their Indian wards who are minors, non compos mentis, or otherwise under legal disability; and

(3) Parents may convey their children's fractional interests in trust or restricted land only for the purposes of consolidation.

(b) Except where otherwise prohibited, an adult or legal entity who has been given a written power of attorney may convey trust or restricted land. The power of attorney must:

(1) Meet all of the formal requirements of any applicable tribal or state law;

(2) Identify the attorney-in-fact and the land to be conveyed; and

(3) Describe the scope of the power granted and any limits thereon.

§ 152.204 Who can receive an interest in trust or restricted lands?

(a) Subject to the conditions in this subpart, trust or restricted land may be conveyed in trust status to:

(1) The tribe having jurisdiction over the parcel;

(2) Any Indian, as defined in § 152.1; or

(3) Any trust or restricted co-owner, as identified in our records as of the date on which the grantor's application to convey is filed.

(b) Subject to the restriction in § 152.205, any individual or entity may receive the interest in fee status. In addition, any individual or entity not eligible under paragraph (a) of this section to receive an interest in trust status must receive the interest in fee status.

§ 152.205 What restrictions apply to a conveyance of trust or restricted land to fee status?

An owner of trust or restricted land who applies to convey that interest to fee status must notify the tribe with jurisdiction over the parcel and provide us with a copy of the notification.

(a) Except as provided in paragraph (b) of this section, when the tribe with jurisdiction over the parcel receives notice, the tribe:

(1) Has a maximum of 30 days to notify us of its intent to purchase; and

(2) Has the opportunity within 30 days after its statement of intent to:

(i) If the conveyance is a sale, pay the purchase price;

(ii) If the conveyance is a gift, pay the fair market value; or

(iii) If the conveyance is an exchange, pay the total payment received by the grantor.

(b) The tribe may not exercise its rights under paragraph (a) of this section, if the parcel or interest to be conveyed is part of a family farm and is being conveyed to a member of the grantor's family who is residing on, or working, the farm. For purposes of this section, ''member of the grantor's family'' means:

(1) A lineal descendant of the grantor;

(2) A lineal descendant of the grandparents of the grantor; or

(3) The spouse of the grantor or of a person described in paragraphs (b)(1) or (b)(2) of this section.

(c) Where a conveyance is made to a family member under paragraph (b) of this section, the deed must include a statement that the tribe will have the rights identified in paragraph (a) of this section if the grantee attempts to convey to a non-family member, except if the conveyance is a mortgage or deed of trust or the tribe provides a written waiver of its right to purchase.

§ 152.206 How does an owner initiate a negotiated sale, gift, or exchange?

To initiate a negotiated sale, gift, or exchange, the owner must provide us with a written request that includes the following:

(a) A description of the land;

(b) The proposed grantee and his or her tribal affiliation, if any;

(c) Any limitations or encumbrances known by the grantor on his or her right to convey the land;

(d) Any intention to reserve rights to the land;

(e) Whether the owner waives his or her right to receive information regarding fair market value for this transaction under § 152.210(b); and

(f) Terms of the sale, gift, or exchange.

§ 152.207 Does a conveyance of a fractional interest require the consent of the co-owner(s)?

No. An Indian may convey a fractional interest without the consent of co-owner(s).

§ 152.208 Is tribal consent required to convey an interest in trust or restricted land located within the tribe's jurisdiction?

(a) If the grantor owns 100 percent of the trust and restricted interests in a parcel, tribal consent for conveyance of the interest is not required.

(b) If the grantor owns less than 100 percent of the trust and restricted interests in the parcel, tribal consent to convey the interest is required only if:

(1) The tribe has jurisdiction over the parcel; and

(2) Applicable tribal law requires approval before a conveyance can occur.

§ 152.209 Is payment required for a negotiated sale, exchange, or gift?

No. A conveyance may be made to any individual or entity at any negotiated price or for no payment. Our approval of the conveyance does not constitute a breach of trust if either:

(1) We have provided to the grantor an estimate of value; or

(2) The grantor waives the right to information about fair market value in accordance with § 152.210.

§ 152.210 When must fair market value be determined and provided to the grantor?

(a) Except as provided in paragraph (b) of this section, the grantor must be notified of the fair market value of his or interest.

(b) The grantor may waive the right to be provided with fair market value information on the interest being conveyed only if:

(1) The grantee acquires the interest in trust or restricted status; and

(2) One of the following criteria is met:

(i) The grantee is an Indian and is the grantor's spouse, lineal ancestor, lineal descendant, sibling, or blood relative; or

(ii) The interest being conveyed is a fractional interest of 5 percent or less, as reflected in our records as of the date on which the application is filed, and the grantee is an Indian co-owner or the tribe having jurisdiction over the parcel.

(c) If the interest has been conveyed under paragraph (b) of this section, the interest may not be conveyed out of trust or restricted status for 5 years.

§ 152.211 When must the Secretary receive payment for the conveyance of the land?

(a) We must receive any payment, on behalf of the grantor, no later than when the grantor executes the deed, unless:

(1) The grantor agrees to a deferred payment;

(2) The purchaser is the Federal Government; or

(3) The payment is escrowed.

(b) To proceed by a deferred payment under paragraph (a) of this section, we may develop a memorandum of sale, or approve a memorandum of sale developed by the parties to the sale, that includes the following terms:

(1) A contract for delivery of title upon payment in full of the amount of the agreed payment;

(2) How revenues will be distributed during the period of the deferred payment;

(3) Late fees and penalties for failure to comply with the terms of the sale;

(4) Contract adjustments;

(5) If the conveyance is to fee status, terms requiring that the purchaser pay not less than 10 percent of the purchase price in advance and terms for the payment of the remaining amount in installments plus interest acceptable to the Secretary and the Indian owner; and

(6) Provisions for default, including a provision that if the purchaser defaults in the first or subsequent payments, all payments, including interest, previously made will be forfeited to the Indian owner(s).

(c) With a deferred payment under paragraphs (a) and (b) of this section, we will hold the deed executed by the grantor(s). We will approve and deliver the deed only upon full compliance with the terms of sale.

§ 152.212 How does the Secretary decide whether to approve a negotiated sale, gift, or exchange?

We will review the application and may approve a negotiated sale, gift, or exchange if:

(a) It does not increase the number of fractional interests;

(b) There is no evidence of fraud or undue influence, or criminal inducement;

(c) There is no reason to believe the grantor lacks the legal capacity to convey; and

(d) The parcels conveyed and acquired will have access to the parcel as required by law.

§ 152.213 How does the negotiated sale or exchange occur?

(a) The purchaser or grantee must deposit with us any proceeds from a negotiated sale or exchange and we shall deposit the proceeds into the grantor's Individual Indian Money account upon our approval.

(b) The grantor will execute the conveyance document, which must:

(1) Include the date of execution and the land description; and

(2) Comply with any boundary standards established by the Department of the Interior, if the parcel is conveyed in trust.

(c) We must promptly record the conveyance document at the Land Title Records Office.

§ 152.214 When is a negotiated sale, gift, or exchange effective?

(a) A negotiated sale, gift, or exchange is effective when we approve the deed.

(b) If we approve the deed after the grantor dies, the sale, gift, or exchange is effective on the date the grantor signed the deed.

(c) If land is purchased for the tribe under the Indian Land Consolidation Program, title will vest in the tribe on the date the conveyance is approved, subject to the type of lien described in 25 U.S.C. 2213(b).

§ 152.215 How does an Indian Land Consolidation Program lien attach?

A lien in the amount of the purchase price will attach to the income derived from any interest purchased for a tribe under the Indian Land Consolidation Program, until the lien has been satisfied or we remove it. Pending such satisfaction or removal, all transaction documents entered into or approved after the date of attachment must provide for the payment of income directly to us, for deposit in the Acquisition Fund for the Indian Land Consolidation Program.

§ 152.216 How is an Indian Land Consolidation Program lien removed?

(a) In consultation with a tribe, we may remove a lien on income derived from an acquired interest.

(1) The removal may be based on income derived from any interest conveyed to the tribe under the Indian Land Consolidation Program.

(2) The total of liens that we remove in a year may not exceed the total income deposited in the Acquisition Fund for the tribe during that period.

(b) We may remove at any time a lien on income derived from an acquired interest if we make a finding that:

(1) The costs of administering the interest will exceed the projected income to be derived therefrom; or

(2) The amount secured by the lien will not be recovered within a reasonable period of time.

§ 152.217 When can a co-owner acquire an interest previously acquired on behalf of a tribe?

This section applies when a fractional interest has been conveyed to a tribe under the Indian Land Consolidation Program but remains subject to an Indian Land Consolidation Program lien.

(a) Any trust or restricted co-owner of the parcel has an option to purchase the interest upon the payment or pledge to us of the full amount paid for that interest under the following conditions:

(1) The co-owner must purchase all of the acquired interests in the parcel which are subject to a lien;

(2) The co-owner may not remove any interest acquired from trust or restricted status except in carrying out the foreclosure of an approved mortgage in accordance with subpart G of this part; and

(3) The option to purchase will not be available if the tribe already owns any interest in the parcel that is not subject to the lien, unless the tribe consents.

(b) To facilitate exercise of the purchase option, a co-owner may request that we provide notice of any initial acquisition in a given parcel on behalf of a tribe under the Indian Land Consolidation Program. In addition, we will provide notice of subsequent acquisition to the co-owner so long as he or she has previously purchased an interest offered in the same parcel.

§ 152.218 What if there are liens or other encumbrances on the lands to be conveyed?

(a) If there are encumbrances that may transfer with the land, then no further action will be taken.

(b) All financial liens, including collection of construction charges or other restrictions, must be cleared before conveyance.

§ 152.219 How does a transaction affect collection of construction costs for irrigation projects?

(a) If the land will remain in trust or restricted status following the sale, gift or exchange, then collection of all construction costs within Indian irrigation projects is deferred as long it remains in trust or restricted status. However, the following conditions apply:

(1) At the time of sale, we will deduct delinquent operation and maintenance charges from the proceeds of the sale unless the seller makes acceptable arrangements to provide for their payment before approval of the sale; and

(2) We will insert a lien clause covering all unpaid irrigation construction costs, past and future, in the instrument of conveyance issued to purchasers of restricted or trust lands that are under an Indian irrigation project.

(b) If the land is conveyed in fee status, then the person acquiring the land must enter into an agreement to pay:

(1) The pro rata share of the construction of the project chargeable to the land;

(2) All construction costs that accrue in the future; and

(3) All future charges assessable to the land which are based on the annual cost of operation and maintenance of the irrigation system.

Subpart D—Tribal Parcel Purchase

§ 152.301 What lands are covered by this subpart?

This subpart applies to all parcels of trust and restricted land, including parcels in which fractional interests are held in fee status.

§ 152.302 What transactions are covered by this subpart?

(a) This subpart authorizes us to convey the fractional interests of all non-consenting owners, including those whose interests are held in fee status, to a tribe, if the tribe:

(1) Owns at least 50 percent of the interests in the parcel; or

(2) Has obtained the consents of the owners of at least 50 percent of ownership interests.

(b) The interests of the non-consenting owners may include the interests of any undetermined heirs or devisees of trust or restricted interests and the interests of any owners whose whereabouts are unknown.

(c) An individual owner in authorized possession of the entire parcel may preempt the tribe's application and succeed to the tribe's right to purchase, under certain conditions as described in § 152.305.

(d) Our authority to approve and implement a parcel purchase under this section by executing the necessary conveyance instrument is not affected or diminished by the existence of a tribal land consolidation plan approved under subpart B of this part.

§ 152.303 How does a tribe apply for a parcel purchase?

(a) A tribe may apply for a parcel purchase when the tribe has either:

(1) Acquired at least 50 percent of the interests in a parcel; or

(2) Obtained the consent of the owners of at least 50 percent of such interests, including interests already owned by the tribe.

(b) An application for parcel purchase must include:

(1) An appraisal prepared in accordance with Uniform Standards for Professional Appraisal Practice that establishes the fair market value of the parcel as of the date the application is filed;

(2) A certified title report or consent forms from the owners, reflecting that the tribe has met the requirements of paragraph (a) of this section; and

(3) A deposit of the purchase funds needed to compensate the owners of all of the non-consenting and non-tribal consenting interests in the parcel, based on the tribe's appraisal.

(c) This paragraph applies when a tribe has acquired at least 50 percent of the interests in a parcel, but is unable to furnish the deposit required by paragraph (b)(3) of this section. Under certain circumstances, we may provide the funds needed to complete the parcel purchase.

§ 152.304 How and when will owners be notified of an application for tribal parcel purchase?

(a) Upon receiving an application for parcel purchase under § 152.303, we

must notify any non-consenting owners of the tribe's intent to purchase their interests under this subpart, even if they have previously refused to consent.

(1) The notice must provide the non-consenting owners with copies of the appraisal and advise that the tribe has offered to purchase their interests at fair market value or better, as reflected by the tribe's appraisal.

(2) If the fair market value is adjusted upon review of the appraisal under § 152.306, we must again provide notice of the offer to purchase under paragraph (a) of this section.

(b) We will conduct a reasonable search for any owners whose whereabouts are unknown. We will give notice to owners whose whereabouts are unknown by publication in at least one newspaper of general circulation in the area of the parcel at least 90 days before closing of the purchase.

(c) Any notice given under this section must:

(1) Instruct the owners to submit objections to the appraisal within 90 days from the date of the notice; and

(2) Advise that any owner who has been in authorized possession of the entire parcel for at least 3 years before the tribe's application can purchase the parcel after notifying us of the intent to purchase as required by § 152.305.

§ 152.305 Can an individual owner preempt and succeed a tribe's right to purchase?

(a) An individual owner in actual use and possession of the entire parcel for 3 years before the tribe's purchase application may preempt and succeed to the tribe's right to purchase the interests of other individual owners. To do this, he or she must submit to us a notice of intent to purchase within 90 days of receiving the notice described in § 152.304. The individual owner's notice of intent to purchase must include:

(1) Proof of authorized possession during the requisite 3-year period; and

(2) A deposit of the purchase funds needed to compensate the owners of the remaining or non-purchaser's interests, based on the tribe's appraisal.

(b) We will review the individual owner's notice of intent and determine if the individual owner has been in authorized possession of the entire parcel for the requisite 3-year period.

(1) If the individual owner is found to be qualified, we will refund the deposit made by the tribe and process the application of the owner exercising the option to purchase.

(2) We must then advise the individual owner that:

(3) All of the outstanding individually owned interests in the parcel will be conveyed without further owner consent, based on tribe's original application; and

(4) Any tribally owned interests in the parcel will be conveyed only with the consent of the tribe.

§ 152.306 How and when will the Secretary review an application for parcel purchase?

(a) We will review the appraisal and any objections to it after:

(1) The notice period required by § 152.304(a) ends; and

(2) We determine whether the application is to be processed on behalf of the initiating tribe or any individual owner exercising an option to purchase.

(b) If we do not approve the appraisal, we will establish fair market value and notify the tribe what additional funds are needed to compensate the outstanding owners at fair market value. If we approve the appraisal, we will notify any objecting owner of the right to appeal under Part 2 of this title, before taking any further action on the application.

(c) If it appears that all of the interests in the parcel can be purchased by agreement among the owners, we must withhold action on the application and assist in preparing the conveyance documents needed to affect the parcel purchase by negotiated conveyance. If it appears that some of the interests cannot be purchased by negotiation, we must issue a formal decision on the application and execute the conveyance instrument needed to affect the parcel purchase.

§ 152.307 How and when will the conveyance instrument be executed?

(a) No sooner than 30 days after the exhaustion of any appellant's administrative remedies, we must issue a conveyance order transferring the remaining or non-purchaser's interests in the parcel, subject to any existing liens and encumbrances. The order may include any interests owned by the tribe if:

(1) A qualifying owner has exercised his or her option to purchase; and

(2) The tribe has consented to convey its interest by an appropriate authorizing resolution.

(b) When we issue the conveyance order, we must:

(1) Notify all owners whose interests have been conveyed as required by § 152.304; and

(2) Record the conveyance order in the appropriate Land Titles and Records Office as required by part 150 of this chapter, and in the appropriate county office if interests in fee status are involved.

Subpart E—Consolidation by Sale of Highly Fractionated Parcels

§ 152.401 What terms do I need to know?

As used in this subpart:

AIPRA means the American Indian Probate Reform Act of 2004.

Consolidation by sale means a procedure by which the ownership of interests in a parcel of highly fractionated land is consolidated by one or more of the eligible bidders' asking the Secretary to sell the parcel.

Bona fide means that an owner of an interest in the subject parcel has, in the case of a residence, maintained it continuously for the preceding 3 years with permission or, in the case of a farm, ranch or other business, operated it on the parcel for the preceding 3 years, in each case under:

(1) A lease or other agreement that has been approved by the Secretary;

(2) An owner management lease under AIPRA; or

(3) Other documented permission.

Eligible bidder means:

(1) The tribe with jurisdiction over the parcel subject to consolidation by sale;

(2) Any person who is a member or eligible to be a member of the tribe with jurisdiction over the parcel;

(3) Any person who is a member or eligible to be a member of any other tribe if such person already owns an undivided interest in the parcel at the time of the consolidation by sale; or

(4) Any lineal descendant of the original allottee of the parcel who is a member or eligible to be a member of a tribe or, with respect to a parcel located in California that is not within a tribe's reservation or not otherwise subject to a tribe's jurisdiction, who is a member or eligible to be a member of a tribe or who owns a trust or restricted interest in the parcel.

Highly fractionated land means trust or restricted land that has either:

(1) From 50 to 99 co-owners of undivided trust or restricted interests, with no single co-owner who owns an undivided trust or restricted interest in the parcel that is more than 10 percent of the entire undivided ownership of the parcel; or

(2) 100 or more co-owners of undivided trust or restricted interests in the parcel.

§ 152.402 What lands are subject to consolidation by sale?

(a) Consolidation by sale applies to trust and restricted lands, on or off the reservation, that are highly fractionated parcels.

(b) Consolidation by sale will include:

(1) All of the interests in such a parcel, including interests held in fee status; and

(2) Surface and subsurface estates.

(c) If the surface and subsurface estates have been severed, only the surface estate can be consolidated by sale under this subpart. Subsurface estates that have been severed cannot be consolidated by sale under this subpart.

§ 152.403 How do I apply to consolidate a parcel by sale?

To apply for consolidating a parcel you must:

(a) Be an eligible bidder; and

(b) Submit a completed consolidation by sale application form.

§ 152.404 What must the Secretary do before acting on an application for consolidation by sale?

(a) Upon receiving an application, we will decide:

(1) Whether the parcel is highly fractionated;

(2) What owner consents are needed and whether they have been obtained;

(3) Costs of providing the notice;

(4) If there are owners of interests in the parcel who cannot be identified or located, the procedures for locating owners whose whereabouts are unknown have been followed; and

(5) The fair market value of the property.

(b) If we determine that a consolidation for sale may proceed, then we will promptly notify the applicant in writing. The notice will include:

(1) A statement that the application is complete;

(2) The estimated costs to the applicant for providing notice to the owners of the parcel, including the costs of mailing and publishing the notice, and a statement that the applicant must either pay the costs or furnish a sufficient bond to cover such costs;

(3) The date by which payment must be made to confirm intent to proceed with the consolidation by sale application; and

(4) Any other information required to process the application.

§ 152.405 What consents are necessary for a consolidation by sale?

(a) For all parcels, we will work with the applicant to obtain consents of the following owners of interests in the parcel to be consolidated by sale:

(1) Consent of the tribe with jurisdiction over the parcel if the tribe owns an undivided interest in the parcel;

(2) Consent of each owner who has continuously maintained a bona fide residence on the parcel or operated a bona fide farm, ranch, or other business on the parcel for the 3 years before the application.

(b) For a parcel where any individual owner's total undivided interest in the parcel is worth more than $1,500, we will seek additional consents. We will work with the applicant to seek the consent of owner(s) of at least 50 percent of the undivided ownership interest in the parcel.

(1) Parents of minor owners and legal guardians of incompetent owners are considered the owners of their minor children's or ward's interests.

(2) The calculation of the undivided interest will not include the interest of the owner requesting the consolidation.

(c) If necessary to obtain consent of at least 50 percent of interests, and after we have completed a search consistent with § 152.409(b) and (c), we may consent on behalf of:

(1) Heirs of trust or restricted interests who cannot be determined;

(2) Minor or incompetent owners who have no parent or legal guardian; or

(3) Missing owners.

§ 152.406 How will the Secretary notify owners of the consolidation proceeding?

(a) Once we determine that a consolidation by sale may proceed, we will notify all owners of undivided interests in the parcel and the tribe with jurisdiction over the parcel. The notice will include:

(1) A statement that the proceeding to consolidate the parcel of land by sale has been started;

(2) The legal description of the parcel;

(3) Each owner's ownership interest in the parcel as determined by the BIA based on current records;

(4) Fair market value and instructions for making a written request for a copy of the appraisal;

(5) A statement that the owner may submit written comments on or objections to the proposed consolidation by sale or to the appraisal within 90 days of receiving the notice;

(6) A statement that the owner must, within the 90-day deadline, comment on or object in writing to the consolidation proceeding or the appraisal in order to receive notice of approval of the appraisal and right to appeal;

(7) The address for requesting copies of the appraisal and the address for submitting comments or objections to the appraisal or to the consolidation sale proceeding;

(8) The name and telephone number of the person to contact for information regarding the proceeding, including the time and date of auction of the parcel or for submitting sealed bids;

(9) Notification that the tribe may exercise its right to match the highest bid on the parcel; and

(10) Notification that co-owners may have a right to purchase the parcel when the highest bidder has been determined.

(b) The notice must be mailed by certified mail, restricted delivery, to all owners of interests in the parcel at addresses found in our current records.

(c) If the notice is returned undelivered, we will attempt to obtain and use a current address for such owner by a reasonable search of records of:

(1) Departmental records;

(2) Local, state, and Federal agencies;

(3) Land records and phonebooks; and

(4) The tribe with jurisdiction over the parcel or the tribe of which the noticed owner is a member.

(d) If we are unable to find any owner, then we will publish the notice:

(1) At least two times in a newspaper of general circulation in the county or counties in which the parcel is located or, if the tribe with jurisdiction over the parcel publishes a monthly tribal newspaper or newsletter, one time in the tribal newspaper or newsletter and one time in the newspaper of general circulation;

(2) By posting the notice conspicuously in the headquarters or administration building or other tribal building of the tribe with jurisdiction over the parcel in the most appropriate location for such a posting; and

(3) By publishing notice in any other place or by other means we deem appropriate.

§ 152.407 What action does the Secretary take on comments or objections?

(a) We will consider all written comments and objections received within 90 days of the notice. We may:

(1) Accept the appraisal if consistent with the Uniform Standards for Professional Appraisal Practice;

(2) Order a new appraisal; or

(3) Terminate the sale and notify by certified mail, restricted delivery, the applicant and all currently known owners of interests in the parcel.

(b) If we receive no comments or objections to the consolidation by sale within 90 days of the notice, we will accept the appraisal and proceed with the sale.

§ 152.408 What happens if the Secretary orders a new appraisal?

(a) If we order a new appraisal, where the appraisal results in a lower valuation of the land, we will provide notice of the results of the new appraisal to all owners of interests in the parcel, and where the new appraisal results in a value of the land that is equal to or greater than that of the earlier appraisal, we will provide the results of the new appraisal to the tribe with jurisdiction over the parcel and all persons who submitted written comments on or

objections to the proposed partition or the appraisal, at addresses found in our current records with a notice including the following information:

(1) The results of the new appraisal;

(2) Notification that the owners can submit written comments on or objections to the proposed consolidation by sale and/or objections to the appraisal within 90 days of receiving the notice;

(3) The address for requesting copies of the appraisal and address for submitting comments or objections to the appraisal and/or consolidation sale proceeding; and

(4) The name and telephone number of the person to contact for information regarding the proceeding, including the time and date of auction of the parcel or for submitting sealed bids.

(b) We will send the notice of the new appraisal by certified mail, restricted delivery, to the tribe with jurisdiction over the parcel.

(c) If we accept the appraisal, we will send a notice of acceptance to the tribe with jurisdiction over the parcel and to all persons who submitted written comments on or objections to the proposed consolidation or appraisal. The notice will include:

(1) Results of the appraisal, which will set the minimum bid for the consolidation by sale;

(2) Rights of each interest owner to review a copy of the appraisal;

(3) A statement that the land will not be sold for less than the appraised value;

(4) The time and date set for the auction of the parcel, or for submitting sealed bids; and

(5) The owner's right to appeal, to whom the appeal should be submitted, and the owner's burden to submit evidence in support of the appeal.

§ 152.409 How can an owner appeal a consolidation by sale proceeding?

(a) An owner may submit an appeal within 30 days of receiving the notice of a new appraisal under § 152.408. The procedures in part 2 of this chapter do not apply to this process.

(b) Upon receiving the appeal, the deciding official will refer the appraisal issues for a desk review to an appraiser who was not involved in the original appraisal. The appraiser will provide review conclusions to the deciding official within 60 days of the referral. After reviewing the appraiser's review conclusions, the deciding official will decide all appraisal issues in the appeal and also decide issues in the appeal regarding the Secretary's determination to allow a consolidation sale of a particular parcel.

(c) The deciding official decides all issues in an appeal and issues a written decision. A decision issued by the deciding official is final for the Department.

§ 152.410 How will the Secretary notify owners of a sale after appeals have been decided?

After all appeals are final, we will set a time and date for a consolidation sale. The sale will be conducted no sooner than 30 days after we have mailed, via certified mail, restricted delivery, a notice of the sale to those owners providing comments or objections to the Notice of Appraisal and Sale or those person(s) requesting notification of sale and the tribe having jurisdiction over the parcel. In addition, we will publish a notice of sale:

(a) In a newspaper of general circulation in the county or counties in which the parcel is located or a tribal newspaper;

(b) By posting the notice conspicuously in the tribal headquarters or administration building; and

(c) In such other locations and manner as we deem necessary.

§ 152.411 Who may participate in an auction or sealed bid sale?

We will conduct the sale either by public auction or sealed bid as appropriate.

(a) Only eligible bidders may participate in the auction or sealed bid sale.

(b) To participate in a sealed bid sale, a bidder must submit a deposit of 10 percent of the full amount of the bid for the parcel, including for his own ownership interest in the parcel. The value of the bidder's ownership interest will be deducted when the final payment amount is calculated.

§ 152.412 How does a tribe reserve its right to match the highest bid?

Before receiving the notice of sale issued under § 152.415, the tribe must have submitted a copy of the authorizing tribal law or resolution or a letter of a tribal officer authorized by tribal law, stating the tribe's intent to reserve the right to match.

§ 152.413 How will the Secretary determine the successful bidder?

(a) The parcel will be sold to the highest bidder unless certain other purchasers listed in paragraph (b) of this section match the highest bid. The sale price must be at least equal to the final appraised fair market value.

(b) We will determine which entities have a right to match the highest bid. The right to match depends on the following criteria:

(1) If the highest bidder is a member of the tribe with jurisdiction over the parcel, then he/she may purchase the parcel, unless one of the restrictions in paragraph (c) of this section applies; and

(2) If the highest bidder is a not a member of the tribe with jurisdiction over the parcel, then the highest bidder may purchase the parcel, unless one of the restrictions in paragraph (d) of this section applies.

(c) A highest bidder who otherwise qualifies under paragraph (b)(1) of this section may not purchase the parcel if either of the following conditions applies:

(1) The owner of the largest interest is a member of the tribe with jurisdiction over the parcel, chooses to purchase the parcel, and meets each of the following requirements:

(i) The owner had submitted a bid on the parcel at sale at least equaling the fair market value;

(ii) At the time immediately before the sale, the owner's undivided interest in the parcel was greater than that of any other owner and equal to or greater than 20 percent of the entire undivided ownership of the parcel; and

(iii) The owner submits to us, within 3 days of the date of auction or date for submitting sealed bids, a written notice of intent to purchase the parcel; or

(2) If no single owner is identified as eligible to buy the parcel under paragraph (c)(1) of this section, and two or more owners who have equal interests, which combined are greater than any other individual interests in the parcel and constitute at least 20 percent of the entire undivided ownership in the parcel, have entered into a written agreement that identifies which of these owners has the right of purchase.

(d) A highest bidder who otherwise qualifies under paragraph (b)(2) of this section may not purchase the parcel if either of the following conditions applies:

(1) The owner of the largest interest in the parcel at the time of the sale is a member of the tribe with jurisdiction over the parcel and meets each of the following requirements:

(i) The owner had submitted a bid on the parcel at sale at least equaling the fair market value;

(ii) At the time immediately before the sale, the owner's undivided interest in the parcel was greater than that of any other owner and equal to or greater than 20 percent of the entire undivided ownership of the parcel;

(iii) The owner submits a written notice of intent to purchase the parcel to us, within 3 days of the date of

auction or the date for submitting sealed bids; and

(iv) The owner tenders the amount of the highest bid within 30 days of the date of auction or submission of sealed bids; or

(2) No single owner is identified under paragraph (d)(1) of this section, then two or more owners who each have identical interests equal to or greater than 20 percent of the interests in the parcel, match the highest bid and have entered into a written agreement that identifies which of these owners has the right to match the highest bid.

(e) If no single owner or group of two or more owners are identified under paragraphs (d)(1) or (d)(2) of this section, and the tribe with jurisdiction has reserved its right under § 152.412 to match the bid of the highest bidder, the tribe may proceed to exercise this right. It may do so by stating its intention to match the bid within 6 business days after the date of auction or for submitting sealed bids.

§ 152.414 What happens if no bid matches the fair market value?

(a) If no bid submitted equals or exceeds the final appraised value, we may either:

(1) Purchase the parcel for its appraised fair market value for the tribe; or

(2) Terminate the consolidation by sale process.

(b) We retain the authority to reschedule the date, place, and time of the sale without providing formal prior notice but will seek to notify interested parties. The sale will be rescheduled as promptly as possible, but no later than 15 days from the date of the original sale.

§ 152.415 When must the highest bidder pay for the purchase?

The highest bidder or the co-owner or tribe that we determined had a right to match or preempt the highest bid must submit payment within 30 days of the auction or the date for submitting sealed bids. If payment is not tendered in 30 days, then the following process will occur:

(a) The next successful bidder identified in § 152.413 will be notified and provided an opportunity to tender payment in 30 days;

(b) If there is no entity identified in § 152.413 that has exercised its right to match or preempt the highest bid, then we will notify the next highest bidder and provide an opportunity to tender payment in 30 days;

(c) If there are no successful bids higher than fair market value, then the Secretary may purchase the parcel or may elect to terminate the consolidation proceeding or reschedule the sale (see § 152.414(b)).

§ 152.416 How will proceeds be distributed?

We will distribute the proceeds of sale of the parcel to the owners of interests in the parcel in proportion to the ownership interest of each owner. We will hold the following proceeds until owners and heirs can be determined:

(a) Proceeds attributable to the sale of interests of owners whose whereabouts are unknown; and

(b) Proceeds of undetermined heirs, or persons whose ownership interests have not been recorded.

§ 152.417 Is Federal financial assistance available to support a bidder's purchase?

We may provide grants and low interest loans to successful bidders at consolidation sales of parcels, but this assistance:

(a) Is limited to 20 percent of the appraised value of the parcel sold; and

(b) Must be applied only toward the purchase price of the parcel sold.

§ 152.418 What title is acquired?

(a) The title is acquired as follows:

(1) In trust, free and clear of any and all title or ownership of all persons or entities whose interest were subject to the sale, except the United States; and

(2) Subject to valid existing rights, such as mortgages, easements, or rights-of-way.

(b) We will execute an appropriate transfer document effecting the sale and recorded in the LTRO.

Subpart F—Partitions in Kind

§ 152.501 What lands are covered by this subpart?

This subpart applies to any parcel of trust or restricted land with more than one owner, irrespective of the number of owners in the parcel. This subpart will not apply to the subsurface interests in a parcel, where those interests have been severed so as to establish separate surface and subsurface ownerships.

§ 152.502 When does this subpart apply?

This subpart applies in cases where the owners have been unable to accomplish a partition in kind by exchange of deeds in accordance with subpart C of this part. It authorizes us to partition trust and restricted land with multiple owners into smaller parcels in which the interests of the owners are unified or consolidated.

(a) If a partition which allocates separate parcels to each of the owners is not feasible, we may implement a partial partition, in which a portion of the parcel remains in multiple ownership.

(b) This subpart does not authorize us to take any other action with respect to land which cannot be partitioned to the benefit of all of the owners.

§ 152.503 How can an owner initiate a partition action?

Any owner of a fractional interest may apply to us for a partition by submitting a partition plan that contains the following information:

(a) Legal descriptions of the parcel to be partitioned and the smaller parcels to be created therefrom, with an accompanying survey if the smaller parcels cannot be described by aliquot parts;

(b) Appraisals of the parcel to be partitioned and the smaller parcels to be created from the parcel; and

(c) Identification of ownership of the parcel to be partitioned and the proposed ownership of the smaller parcels to be created therefrom, with an accompanying title report for the whole parcel.

§ 152.504 How will you notify the applicant's co-owners of an application for partition?

(a) Upon receiving an application for partition under § 152.503, we must notify the owners of the parcel to be partitioned and provide them with copies of the applicant's partition plan. We will take the following steps to notify all owners:

(1) We will make a reasonable search for any owners whose whereabouts are unknown;

(2) After this search, we will send a written notice of the application to all owners whose whereabouts we could determine; and

(3) To notify owners we could not locate, we will publish a notice in newspapers of general circulation in the area of the parcel to be partitioned.

(b) Our notice will instruct the owners to submit comments or objections or alternative partition plans to us, within 90 days of the date that we mail and publish the notice.

(c) We must treat the submission of an alternative partition plan as a new application requiring additional notice and invitations for comment.

§ 152.505 How and when will you review an application?

(a) At the end of the notice period required by § 152.504(c), we must verify the ownership of the parcel to be partitioned, and review the partition plans and any comments.

(1) If it appears that the parcel can be partitioned by agreement among all the owners, we must assist in preparing the

conveyance documents needed to effect a partition by exchange of interests.

(2) If it appears that the parcel cannot be partitioned by agreement, we must issue a formal decision on the application(s).

(b) In evaluating an application to partition, we must determine if the parcel can be partitioned equitably among all of the owners. In making that determination, we will consider whether:

(1) After partition, each owner would hold property equal in value to that held before partition, in proportion to the interests of the other owners;

(2) The smaller parcels created by the partition would be economically usable, based upon characteristics such as size, location, access, etc.;

(3) Any owner has a history of using areas within the parcel to be partitioned, that would justify those areas being equitably partitioned and conveyed to that owner; and

(4) The parcel to be partitioned contains any sites of particular cultural, historical, or other significance to more than one owner, that would make it inequitable to partition those sites and convey them to a single owner.

(c) Upon a determination that a parcel cannot be partitioned in an equitable manner, we must notify the applicant of the right to appeal under part 2 of this chapter. Upon a determination that a parcel can be partitioned in an equitable manner, we must notify any owner that objected or submitted an alternative partition plan of his or her right to appeal under part 2 of this chapter, before taking any further action on the application.

§ 152.506 When will you execute the conveyance instruments?

(a) No sooner than 30 days after exhausting any appellant has exhausted his or her administrative remedies, if our determination under § 152.505(c) has been affirmed, we must issue a partition order. The order may include reference to any existing liens and encumbrances.

(b) Upon issuance of the order we will notify all of the affected owners, in the same manner as described in § 152.504. We must then record the partition order and any accompanying survey in the appropriate LTRO, in accordance with part 150 of this chapter.

Subpart G—Mortgages and Deeds of Trust

§ 152.601 What does this subpart do?

This subpart applies to mortgaging of parcels of trust or restricted land owned by individuals, including parcels in which fractional interests are held in fee status.

(a) This subpart explains how we can approve mortgages or deeds of trust executed by individual owners in cases where all of the trust or restricted interests in a parcel are:

(1) Encumbered; and

(2) Subject to foreclosure or sale if there is a default.

(b) This subpart does not apply to any of the following:

(1) Mortgages of fractional interests held in fee status;

(2) Other types of encumbrances that may be executed or approved in order to secure a loan, including assignments of income derived from trust or restricted lands; or

(3) Mortgages or deeds of trust of leasehold or other possessory interests.

§ 152.602 How do owners submit an application for approval of a mortgage or deed of trust?

Only the owner(s) or the proposed mortgagee or beneficiary can submit an application for approval of a mortgage or deed of trust. The application must include:

(a) An executed mortgage or deed of trust to be approved;

(b) The promissory note defining the amount of the loan to be secured and other terms;

(c) Any other documents describing the remedies available to the secured party in the event of a default on the loan;

(d) An appraisal or evaluation furnished by the lender or borrower that establishes the fair market value of the parcel as of the date on which the application for loan was filed;

(e) The loan application and any other description of how the loan proceeds will be used;

(f) Any credit report or credit analysis required, obtained, or prepared by the proposed mortgagee or beneficiary, with a verification of the borrower's income or a description of other means of debt coverage;

(g) Any title reports or title insurance policies required or obtained by the proposed mortgagee or beneficiary; and

(h) Any necessary environmental or historic preservation documentation.

§ 152.603 How will the Secretary review the application?

(a) Within 30 days of receiving a complete application for approval of a mortgage or deed of trust, we must determine whether:

(1) The land to be encumbered has been adequately described and the loan documents have been properly executed;

(2) The loan-to-value ratio is reasonable, based on the evidence of fair market value in the application and the lender's valuation;

(3) The risk of default on the loan is reasonable, based on the evidence of the ability to repay in the application;

(4) All of the owners of trust and restricted interests in the parcel have executed the mortgage or deed of trust, and any necessary consents have been obtained from other lienholders or encumbrancers; and

(5) The remedies available to the mortgagee or beneficiary in the event of a default on the loan, and any rights or remedies available to the tribe having jurisdiction over the parcel in the event of a foreclosure or sale, are clearly defined in the mortgage, deed of trust, or other loan documents.

(b) If we decide not to approve the mortgage or deed of trust, we will notify the parties of their rights to appeal under part 2 of this chapter.

(c) If we decide to approve the mortgage or deed of trust, we must:

(1) Record the approved document in the Land Titles and Records Office in accordance with part 150 of this chapter; and

(2) Request an updated title status report reflecting the recordation.

(d) A decision to approve a mortgage or deed of trust under this subpart is not appealable under part 2 of this chapter and is not considered to be a breach of trust.

§ 152.604 How may the mortgage or deed of trust be enforced?

(a) If an owner defaults on a loan secured by an approved mortgage or deed of trust, the encumbered land is subject to foreclosure or sale in accordance with the terms of the approved document and either:

(1) The laws of the tribe having jurisdiction over the parcel; or

(2) If there are no applicable tribal laws, the laws of the state in which the land is located.

(b) If there is a foreclosure or sale to enforce the terms of an approved mortgage or deed of trust, the United States:

(1) Is not a necessary party; and

(2) Is not required to approve any conveyance arising out of the proceeding.

§ 152.605 Does the land remain in trust as a result of foreclosure or sale?

(a) If the encumbered land is purchased by a tribe or Indian as a result of a foreclosure or sale proceeding, title remains in trust or restricted status.

(b) If the encumbered land is purchased by any other party as a result

of a foreclosure or sale proceeding, title will be taken consistent with the laws applicable to that foreclosure or sale proceeding.

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

The collections of information contained in §§ 152.3, 152.105, 152.107, 152.206, 152.217, 152.219, 152.303, 152.403, 152.412, 152.503, and 152.602 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–xxxx. 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.

13. Revise part 179 to read as follows:

PART 179—LIFE ESTATES AND PRESENT AND FUTURE INTERESTS

Sec.

179.1 What is the purpose of this part?
179.2 What terms do I need to know?
179.3 Who can hold a life estate?
179.4 Who can be the measuring life for a life estate?
179.5 Who can be designated as a future interest holder?
179.6 Who can be members of a class?
179.7 How are interest holders determined if the conveyance document or order contains conditions?
179.8 How are members to be determined if there is an open class?
179.9 What are the privileges of a life tenant?
179.10 What is the life tenant's responsibility to the remainderman?
179.11 How can a future interest holder stop the life tenant from damaging his or her interest and substantially diminishing its value?
179.12 How will the Secretary distribute income and principal between the life tenant and the remainderman?
179.13 How will the value of a current life estate and remainder be determined?
179.14 How does a life estate terminate?
179.15 What if I do not want an interest in a life estate?
179.16 Why do I need to notify the Secretary about the death of a life tenant?
179.17 How will term estates be treated?

Authority: 86 Stat. 530; 86 Stat. 744; 94 Stat. 537; 96 Stat. 2515; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201–11; 25 U.S.C. 2201 Note; Pub. L. 108–374, 118 Stat. 1773.

Cross-Reference: For regulations pertaining to income, rents, profits, bonuses and principal from Indian land and the recording of title documents pertaining thereto, see parts 15, Probate; 150, Land Records and Title Documents; 152, Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands; 162, Leasing and Permitting; 163, General Forest Regulations; 166, General Grazing Regulations; 169, Rights-of-Way over Indian Lands; 170, Roads of the Bureau of Indian Affairs; 212, Leasing of Allotted Lands for Mining; 213, Leasing of Restricted Lands of Members of the Five Civilized Tribes, Oklahoma, for Mining; 215, Lead and Zinc Mining Operations and Leases, Quapaw Agency; 26 CFR 20.2031–7 Gross Estates, Valuation of Annuities; 43 CFR part 4 subpart D, Rules Applicable in Indian Affairs Hearings and Appeals; 43 CFR part 30, Indian Probate Hearings Procedures; for trespass see 25 CFR part 166.

§ 179.1 What is the purpose of this part?

This part sets forth the authorities, policy, and procedures governing the administration of life estates and present and future interests in Indian land by the Secretary of the Interior. These regulations do not apply to any use rights assigned to tribal members by tribes exercising their jurisdiction over tribal lands. This part does not apply to any federal statutory rights to purchase or otherwise acquire an interest in Indian land reserved to an individual or tribe.

§ 179.2 What terms do I need to know?

As used in this part:

Class means a group of persons who share an interest in an estate.

Condition means a qualification or restriction that must be satisfied or occur before an estate or interest commences, enlarges, reduces, or terminates. Condition includes limitations on the estates of grantor and grantee. Condition does not include the natural termination of a life estate or term estate.

Contingent remainder means a remainder:

(1) In an unborn person;

(2) In a non-specified person; or

(3) Subject to some other condition.

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

Conveyance document means a legal instrument that transfers an interest in an estate. Conveyance document does not include a will.

Disproportionately high means the investment expenses exceeds the interest income.

Estate means the interest which a person has in Indian land. Estate include a life estate.

Executory interest means a future interest which cuts short or springs from a preceding estate or interest that is cut short by a condition.

Extant person means a living person or legally recognized existing entity. A living person does not include a child in gestation except when the child in gestation receives the estate or interest by probate order. If an interest is created in a child in gestation in a probate order, that a child will be treated as a living person only if the child survives at least 120 hours after its birth.

Future interest means an interest in an estate with only a future right to possession and enjoyment of the Indian land, such as a remainder, executory interest, or reversionary interest.

Grantee means a person who receives an interest in Indian land.

Grantor means a person who transfers an interest in Indian land.

Holder means a person who owns an estate or interest in Indian land.

Income means the rents and profits from Indian land and the interest on invested principal.

Indian land means all lands held in trust by the United States for individual Indians or tribes; or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance.

Life estate means an estate in Indian land the duration of which is measured by the life of the life tenant or other living person or persons.

Life tenant means a person or persons who hold an interest in a life estate.

Open class means a class in which membership has not been closed to persons qualifying as members.

Open Mine Doctrine means the doctrine which allows a holder of an interest in a life estate to continue the exploration, extraction, and depletion of resources of the land and to receive any rents, royalties, or profits, without the consent of the remainderman, if the activity is in progress or a lease or contract is in effect when the life estate vested. Open Mine Doctrine applies to hard mineral extraction and oil and gas production.

Order means a directive issued by the Secretary or a court of competent jurisdiction.

Person means a specific, extant person, unless a specific section states otherwise.

Present interest means an interest in an estate in Indian land with a right to possession and enjoyment that begins at the moment a conveyance takes effect.

Principal means the corpus and capital of an interest in an estate, including any payment received for the sale or diminishment of the corpus.

Remainder means a future interest which follows the termination of a life estate or term of years.

Remainderman means one or more persons who hold a remainder.

Reversionary interest means an interest that is held by the grantor and arises when any preceding estate in a grantee terminates other than by condition.

Secretary means the Secretary of the Interior or authorized representative.

Term estate means an estate which terminates upon the expiration of a designated time period or surrender of the interest by the interest holder.

Vested means having absolute right or title in property.

We means the Secretary of the Interior or authorized representative.

§ 179.3 Who can hold a life estate?

Any person can hold a life estate subject to the following:

(a) Any life estate must have no conditions in favor of the grantor or a grantee; and

(b) If a life estate is granted to, or for the life of, multiple persons, the granting document must establish the share of the estate each person is to receive.

§ 179.4 Who can be the measuring life for a life estate?

Any specific person or persons living at the time we approve the conveyance document or upon death of the decedent may be the measuring life for a life estate.

§ 179.5 Who can be designated as a future interest holder?

Any person may be a future interest holder. However, no future interest subject to conditions in favor of the grantor or a grantee is valid if the conditions cannot be satisfied before either:

(a) When we approve the conveyance document; or

(b) When the decedent dies.

§ 179.6 Who can be members of a class?

The members of any class are those persons who can be identified as persons either when we approve the conveyance or upon the death of the decedent.

§ 179.7 How are interest holders determined if the conveyance document or order contains conditions?

(a) If we determine that the conveyance document imposes any condition on an interest in Indian land, we will determine whether the condition is satisfied either:

(1) When we approve the conveyance document; or

(2) When the decedent dies.

(b) If the condition is established by order of some other authority, we will determine whether the condition is satisfied based upon the order.

(c) It may happen that there are no persons when we approve the conveyance document, or at the death of the decedent, or by the terms of the order. In this case, the future interest that would have vested in those persons passes to the grantor or to the estate of the grantor.

§ 179.8 How are members to be determined if there is an open class?

(a) If a class is designated as a recipient of an interest in a conveyance document, we will:

(1) Identify the persons who are members of the class when we approve the conveyance document; and

(2) Close the class to any additional persons who might otherwise qualify as members.

(b) If a class is designated as a recipient of an interest during the probate process under 43 CFR part 30, we will:

(1) Identify the persons who are members of the class as of the death of the decedent; and

(2) Close the class to any additional person who might otherwise qualify as members of the class.

(c) We may close any class when we:

(1) Have received monies attributable to the interests held by the class; and

(2) Have determined that there is at least one person who can receive the monies.

(d) We may close any open class for any purpose that facilitates identification of beneficiaries and assets of the trust. We may then distribute the trust assets to the beneficiaries.

§ 179.9 What are the privileges of a life tenant?

(a) A life tenant is granted, for the term of the life estate, the right to:

(1) Possess and use estate assets;

(2) Receive a share of the principal and income produced by the estate as set forth in § 179.12; and

(3) Sell the life estate described in the conveyance document or order.

(b) The rights in paragraph (a) of this section apply only in the absence of specific provisions to the contrary in the conveyance document or order.

§ 179.10 What is the life tenant's responsibility to the remainderman?

The provisions of this section apply absent specific provisions to the contrary in the conveyance document or order.

(a) The life tenant has responsibilities to the remainderman as shown on the following table.

If the life estate was created by...	Then...	Except as to...
(1) Probate order before June 20, 2006, and the decedent died before June 20, 2006.	the responsibility of the life tenant to the remainderman is defined by federal law and regulation in effect at the date of the creation of the life estate.	distribution of monies from rents, cash bonus and royalties and valuation of the life estate and remainder as set forth in this part.
(2) Operation of law under 25 U.S.C. 2206 or federally approved tribal probate code approved under 25 U.S.C. 2205.	(i) The life tenant may use the land or structures on the land (including for extraction and production of minerals, oil, gas, and timber) without the remainderman's consent; and (ii) The life tenant must not destroy the estate, commit malicious waste or fail to reasonably manage the land in a manner consistent with long-time use and trust status of the land.	
(3) Conveyance document before the effective date of this part.	the responsibility of the life tenant to the remainderman is defined by federal law and regulation in effect on the date the life estate was created.	distribution of monies from rents, cash bonuses, and royalties and valuation of the life estate and remainder as set forth in this part.
(4) Conveyance document after the effective date of this part	(i) The life tenant may use the land or structures on the land (including for extraction and production of minerals, oil, gas, and timber) without the remainderman's consent; and (ii) The life tenant must not destroy the estate, commit malicious waste, or fail to reasonably manage the land in a manner consistent with long-time use and trust status of the land.	

(b) In order to preserve and protect the trust, we must review and make a final determination on any contract involving trust assets, unless the law provides otherwise.

(c) Our authority to consent to the leasing or transfer of Indian land on behalf of the interest holders is not diminished or modified by this section.

§ 179.11 How can a future interest holder stop the life tenant from damaging his or her interest and substantially diminishing its value?

If you are a future interest holder who feels that a life tenant may be damaging the estate, you may ask us to investigate the use of the land. If we find that the life tenant has taken actions not consistent with § 179.10, we may proceed as if the life tenant has trespassed on the property and take action under parts 162 and 212 of this chapter.

§ 179.12 How will the Secretary distribute income and principal between the life tenant and the remainderman?

(a) The Secretary must determine whether:

(1) The Secretary ordered the distribution of the interests in the life estate and remainder in the probate of an estate of a decedent who died on or after June 20, 2006 or the Secretary approved the conveyance document of the interests after the effective date of these regulations;

(2) An order or conveyance document specifies a distribution of proceeds;

(3) The vested remainderman and life tenant have entered into a written agreement approved by the Secretary providing for the distribution of proceeds; or

(4) The life tenant is entitled, by any document or agreement or by application of state law, such as the open mine doctrine, to receive the rents, royalties, and profits attributable to the exploration, extraction or depletion of estate resources.

(b) If the Secretary determines that the conveyance is the result of an order distributing the probate estate of a decedent who died on or after June 20, 2006, or the Secretary approved the conveyance document of the interests after the effective date of these regulations and paragraphs (a)(2) and (3) of this section do not provide otherwise, then the Secretary must distribute all income, principal, and contract bonuses and royalties, to the life tenant until the life estate is terminated.

(c) If the Secretary determines that the conveyance is the result of an order distributing the probate estate of a decedent who died before June 20, 2006, or the Secretary approved the conveyance document before the effective date of this regulation and paragraphs (a)(2), (3), and (4) of this section do not provide otherwise, the Secretary must:

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

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

(3) In the case of mineral contracts, invest the principal, with interest income to be paid the life tenant during the life estate, except in those instances where the administrative cost of investment is disproportionately high, in which case paragraph (e) of this section applies. The principal allocated to the remainderman under this section will be distributed to the remainderman upon termination of the life estate. The life tenant will receive distribution of the principal allocated to the life tenant immediately.

(d) If the Secretary determines that paragraphs (a) (2), (3), or (4) of this section provide otherwise, the Secretary must distribute the income and principal in accordance with those provisions.

(e) In all other instances, the Secretary shall distribute the principal immediately according to the formulas set forth in § 179.13. All proceeds attributable to a contingent remainderman or future interest holder subject to class whose membership is not closed will be invested in an account with disbursement to take place upon determination of the future interest holder or closing of membership of the class. The life tenant will receive distribution of the principal allocated to the life tenant immediately.

§ 179.13 How will the value of a current life estate and remainder be determined?

(a) We will refer to the most current version of Actuarial Table S, Valuation of Annuities, obtained from 26 CFR 20.2031 to determine the value of your life estate or remainder and distribute principal under § 179.12(e).

(b) Table S specifies the share attributable to the life estate and remainder's interest, given the age of the life tenant and an established rate of return. We will periodically review and revise the percent rate of return to be used to determine the share attributable to the interests of the life tenant and the remainderman. The life tenant will receive the balance of the distribution after the remainderman's share has been calculated.

(c) Applying Table S, we will use the following formulae to determine the value of the interests of the life tenant and remainderman:

(1) Value of Remainder = I * R, where I is the total value to be distributed and R is the remainder factor obtained from Table S for a given life tenant's age and rate of return; and

(2) Value of Life Estate = I − Value of remainder, where I is the total value to be distributed and the Value of remainder was calculated above.

§ 179.14 How does a life estate terminate?

A life estate terminates upon whichever occurs first:

(a) The death of the person or persons used to measure the duration of the life estate;

(b) The transfer by the life tenant of the interest to the remainderman or grantor; or

(c) The acquisition by the life tenant of all future interests.

§ 179.15 What if I do not want an interest in a life estate?

You may renounce your interest during the probate process before the order is issued or transfer your interest by conveyance document to another person.

§ 179.16 Why do I need to notify the Secretary about the death of a life tenant?

(a) You should notify us of the death of the life tenant or other person used to measure the duration of the life estate to ensure that:

(1) The records properly reflect the present and future interests holders; and

(2) Any proceeds received from these interests are correctly distributed to the holders.

(b) See 25 CFR 15.104 for instructions on how to notify the Secretary of the death.

§ 179.17 How will term estates be treated?

For purposes of distribution of income, cash bonuses, and principal, we will treat term estates in the same manner as a life estate.

Title 43—Public Lands: Interior

Subtitle A—Office of the Secretary of the Interior

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

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

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

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

Cross-reference: For regulations pertaining to the processing of Indian probate matters within the Bureau of Indian Affairs, see 25 CFR part 15. For regulations pertaining to the probate of Indian trust estates within the

Probate Hearings Division, Office of Hearings and Appeals, see 43 CFR part 30. For regulations pertaining to the authority, jurisdiction, and membership of the Board of Indian Appeals, Office of Hearings and Appeals, see subpart A of this part. For regulations generally applicable to proceedings before the Hearings Divisions and Appeal Boards of the Office of Hearings and Appeals, see subpart B of this part.

16. In subpart D, remove undesignated center heading, ''Determination of Heirs and Approval of Wills, Except as to Members of the Five Civilized Tribes and Osage Indians; Tribal Purchases of Interests Under Special Statutes.''

17. Revise §§ 4.200 and 4.201 to read as follows:

§ 4.200 How to use this subpart.

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

For provisions relating to . . .	consult . . .
(1) All proceedings in subpart D	§§ 4.200 and 4.201.
(2) Appeals to the Board of Indian Appeals generally	§§ 4.310 through 4.318.
(3) Appeals to the Board of Indian appeals from decisions of the Probate Hearings Division in Indian probate matters.	§§ 4.320 through 4.326.
(4) Appeals to the Board of Indian Appeals from actions or decisions of BIA.	§§ 4.330 through 4.340.
(5) Determinations under the White Earth Reservation Land Settlement Act of 1985.	§§ 4.350 through 4.357.

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

§ 4.201 Definitions.

As used in this subpart:

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

Agency means the Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land. This term also means any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

BIA means the Bureau of Indian Affairs within the Department.

Board means the Interior Board of Indian Appeals (IBIA) within OHA, authorized by the Secretary to hear, consider, and determine finally for the Department appeals taken by aggrieved parties from actions by OHA judges on petitions for rehearing or reopening, and allowance of attorney fees, and from actions of BIA officials as provided in § 4.1(b)(2) of this subtitle.

Day means a calendar day, unless otherwise stated.

Decedent means a person who is deceased.

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

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

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

Heir means any individual or entity eligible to receive trust or restricted land and trust personalty from a decedent in an intestate proceeding.

Indian probate judge (IPJ) means a licensed attorney employed by OHA, other than an ALJ, to whom the Secretary has delegated authority to hear and decide Indian probate cases under 5 U.S.C. 556(b).

Interested party means any of the following:

(1) Any potential or actual heir;

(2) Any devisee under a will;

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

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

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

Intestate means the decedent died without a valid will.

Judge means an ALJ or IPJ.

LTRO means the Land Titles and Records Office within BIA.

Probate means the legal process by which applicable tribal, Federal, or state law that affects the distribution of a decedent's estate is applied 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 funds; 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 the funds or land.

Restricted property means real property, the title to which 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.

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

Will means a written document executed with the required formalities and intended to pass the testator's property upon death.

18. Remove §§ 4.202 through 4.308, along with their undesignated center headings.

19. Revise § 4.320 to read as follows:

§ 4.320 Who may appeal a judge's order on petition for rehearing or reopening or regarding purchase of interests in a deceased Indian's trust estate.

Any interested party who is adversely affected has a right to appeal to the Board from an order of a judge on a petition for rehearing, a petition for reopening, or regarding purchase of interests in a deceased Indian's trust estate under part 30 of this subtitle.

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

§ 4.321 How to appeal a judge's order on petition for rehearing or reopening or regarding purchase of interests in a deceased Indian's trust estate.

(a) Within 30 days after the date of the judge's order, an appellant must file a written notice of appeal signed by the appellant, the appellant's attorney, or other qualified representative as provided in § 1.3 of this subtitle, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

(b) A notice of appeal not timely filed must be dismissed for lack of jurisdiction.

§ 4.322 What an appeal must contain.

(a) The appellant must file a statement of the errors of fact and law upon which the appeal is based. This statement may be included in either the notice of appeal or an opening brief.

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

§ 4.323 Service of the notice of appeal.

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

(b) A copy must be served on the judge whose decision is being appealed as well as on all interested parties.

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

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

§ 4.324 Record on appeal.

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

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

(c) If a transcript of the hearing was not prepared, the judge will have a transcript prepared and forwarded to the Board within 30 days after receiving a copy of the notice of appeal.

(d) The LTRO must forward the original record on appeal to the Board by certified mail.

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

§ 4.325 Docketing the appeal.

The Board will docket the appeal upon receiving the administrative record from the LTRO and will provide notice of the docketing to all interested parties as shown by the record on appeal. The docketing notice will specify the time within which briefs may be filed and will cite the procedural regulations governing the appeal.

§ 4.326 Disposition of the record.

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

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

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

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

22. Add part 30 to read as follows:

PART 30—INDIAN PROBATE HEARINGS PROCEDURES

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30.100 How do I use this part?
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Subpart B—Commencement of Probate Proceedings

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Authority: 5 U.S.C. 301; 25 U.S.C. 9, 372–374, 410, 2201 *et seq.*; 43 U.S.C. 1201, 1457.

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

Subpart A—Scope of Part; Definitions

§ 30.100 How do I use this part?

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

For provisions relating to . . .	Consult . . .
(1) All proceedings in part 30	§ § 30.100 through 30.102
(2) Claims against probate estate	§§ 30.140 through 30.148.
(3) Commencement of probate	§§ 30.110 through 30.115.
(4) Consolidation of interests	§§ 30.150 through 30.153.
(5) Formal probate proceedings before an administrative law judge or Indian probate judge.	§§ 30.210 through 30.246.
(6) Probate of trust estates of Indians who die possessed of trust property.	All sections except §§ 30.260 through 30.274.

For provisions relating to . . .	Consult . . .
(7) Purchases at probate	§§ 30.160 through 30.177.
(8) Renunciation of interests	§§ 30.180 through 30.191.
(9) Summary probate proceedings before an attorney decision maker	§§ 30.200 through 30.206.
(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.

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

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

(b) We will not probate the following property:

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

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

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

(c) We will probate that part of the estate of a deceased member of the Five Civilized Tribes or Osage Nation who owned a trust interest in land or a restricted interest in land derived from an individual Indian other than a member of the Five Civilized Tribes or Osage Nation.

(d) Except as limited by the provisions in this part, the rules in subparts A and B of part 4 of this subtitle apply to all proceedings covered by this part.

§ 30.102 What terms do I need to know?

As used in this part:

Act means the Indian Land Consolidation Act and its amendments including Public Law 108–374, the American Indian Probate Reform Act of 2004 (AIPRA).

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

Agency means the Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land. This term also means 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 a licensed attorney employed by OHA who conducts a summary proceeding and renders a decision that is subject to de novo review by an administrative law judge or Indian probate judge.

BIA means the Bureau of Indian Affairs within the Department.

BLM means the Bureau of Land Management within the Department.

Board means the Interior Board of Indian Appeals (IBIA) within OHA, authorized by the Secretary to hear, consider, and determine finally for the Department appeals taken by aggrieved parties from actions by OHA judges on petitions for rehearing or reopening, and allowance of attorney fees, and from actions of BIA officials as provided in § 4.1(b)(2) of this subtitle.

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

Child includes any 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 25 U.S.C. 2206(j)(9), by which a decedent's heirs and devisees consolidate interests in trust or restricted land, entered during the probate process, approved by the judge, and implemented by the probate order.

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

Day means a calendar day, unless otherwise stated.

Decedent means a person who is deceased.

Decision or order (or decision and order) means 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. Decision or order also means the decision issued by an attorney decision maker in a summary probate proceeding.

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

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

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

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

(4) Issue a decision.

Department or DOI means the Department of the Interior.

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

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

Eligible heir means, for the purposes of the Act, 25 U.S.C. 2206, 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 trial-type proceeding, conducted by a judge, in which evidence is obtained, through testimony of witnesses and the receipt of relevant documents.

Heir means any individual or entity eligible to receive trust or restricted land and trust personalty from a decedent in an intestate proceeding.

I means, in question headings, an heir, a devisee, an owner of trust or restricted land or trust personalty, or a creditor.

IIM account means funds held in trust in an individual Indian money (IIM) account by OST or by a tribe performing this function under a contract or compact. These funds are also referred to as ''trust personalty.''

Indian means, for the purposes of the Act, 25 U.S.C. 2206:

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

(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 land in that State.

Indian probate judge (IPJ) means a licensed attorney employed by OHA, other than an ALJ, to whom the Secretary has delegated authority to hear and decide Indian probate cases under 5 U.S.C. 556(b).

Interested party means any of the following:

(1) Any potential or actual heir;

(2) Any devisee under a will;

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

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

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

Intestate means the decedent died without a valid will.

Judge means an ALJ or IPJ.

LTRO means the Land Titles and Records Office within BIA.

Minor means an individual who has not reached the age of majority as defined by the applicable law.

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

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

Per stirpes means by right of representation, dividing an estate into equal shares based on the number of decedent's surviving children and predeceased children who left issue and who survive the decedent. The share of a predeceased child of the decedent is divided equally among the predeceased child's surviving children.

Probate means the legal process by which applicable tribal, Federal, or State law that affects the distribution of a decedent's estate is applied 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 funds; 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 the funds or land.

Probate staff means a DOI or tribal employee who is trained in Indian probate matters and who is responsible for preparing the probate file.

Purchase option at probate refers to 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 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. The authorized representative of the Secretary for the performance of probate functions is BIA. The authorized representative of the Secretary for adjudication of probate is OHA.

Summary probate proceeding means the consideration of a probate file without a hearing and on the basis of the probate file received from the BIA. A summary probate proceeding may be conducted if the estate involves only trust personalty and does not exceed the amount of $5,000 on the date of the death of the decedent.

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

Testate means that the decedent executed a valid will.

Testator means a person who has executed a valid will.

Trust personalty means all 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, for which the United States holds the title to the property in trust for the benefit of an individual Indian or tribe.

We means the Secretary of the Interior or an authorized representative as defined in this section.

Will means a written document executed with the required formalities and intended to pass the testator's property upon death.

You means, in regulatory text, an heir or devisee or owner of trust or restricted land or trust personalty, unless a specific section defines ''you'' to have another meaning.

Subpart B—Commencement of Probate Proceedings

§ 30.110 When does OHA commence a probate case?

OHA commences probate of a trust estate when OHA receives a probate file from BIA.

§ 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 probate file contain?

A probate file must contain the documents and information described in 25 CFR 15.302 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 it received from BIA is not complete and the probate file is not accompanied by the certification described in 25 CFR 15.303, OHA may:

(a) Request the missing information from BIA;

(b) Dismiss the case and return the probate file to BIA for further processing;

(c) Issue a subpoena or request for production as appropriate to obtain the missing information; or

(d) Proceed with a hearing in the case.

§ 30.114 What notice of the probate case will OHA send me?

OHA will send a notice of hearing to potential heirs, devisees, and creditors if the case is designated as a formal probate proceeding. In a case designated as a summary probate proceeding, OHA will send potential heirs and devisees a notice of the designation. OHA also will inform potential heirs and devisees that a formal probate proceeding may be requested instead of the summary process.

§ 30.115 Can I review the probate file?

After OHA receives the case, any interested party may examine the probate file during regular business hours and make copies upon payment of the reasonable cost of copying.

Subpart C—Judicial Authority and Duties

§ 30.120 What authority does the judge have in probate cases?

A judge has the general authority to:

(a) Determine the manner, location, and time of hearings conducted under this part, and otherwise to administer the cases assigned to the judge;

(b) Determine the heirs of any Indian or eligible heir who dies intestate possessed of trust or restricted property;

(c) Approve or disapprove a will disposing of trust or restricted property;

(d) Accept or reject any full or partial renunciation of interest in both testate and intestate proceedings;

(e) Approve or disapprove any consolidation agreement;

(f) Conduct sales at probate and provide for the distribution of interests in the probate decision and order;

(g) Allow or disallow claims by creditors;

(h) Order the distribution of trust property to heirs and devisees and determine and reserve the share or shares that any potential heir or devisee who is missing but not found to be deceased by a court of competent jurisdiction is entitled;

(i) Determine whether a tribe has jurisdiction over the trust or restricted property and, if the tribe has jurisdiction, the right of the tribe to take a decedent's trust or restricted property under 25 U.S.C. 2206(a)(2)(B)(v), 2206(a)(2)(D)(iii)(V), or other applicable laws;

(j) 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, upon the judge's initiative or, within the judge's discretion, upon the request of an interested party;

(k) Administer oaths and affirmations;

(l) Order the taking of depositions and determine the scope and use of deposition testimony;

(m) Order the production of documents and records and determine the scope and use of the documents and records;

(n) Rule on matters involving interrogatories and any other requests for discovery, including admissions;

(o) Grant or deny stays, waivers, and extensions;

(p) Hear, consider, and rule on motions, requests, and objections;

(q) Rule on the admissibility of evidence;

(r) Permit the cross examination of witnesses;

(s) Appoint a guardian ad litem for any interested party who is a minor or found by the judge to be not competent to represent his or her own interests;

(t) Inquire of persons and agencies in order to complete the record in probate proceedings and to protect the integrity of the record;

(u) Hear and consider the claims of creditors against the estate, allowing or dismissing claims based on the evidence and the law;

(v) Provide information to interested parties about the right to appeal and concerning consolidation agreements, renunciations of interest, and purchases at probate as necessary;

(w) Administer the probate case and regulate the course of any hearing and the conduct of witnesses, interested parties, attorneys, and attendees at a hearing;

(x) Determine and impose sanctions and penalties allowed by law; and

(y) Take such action as 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:

(1) To conduct hearings on the record and hear evidence as to all or specific issues in probate cases as assigned by the judge;

(2) To make written reports including findings of fact and conclusions of law; and

(3) To propose recommended decisions to the judge.

(b) Upon filing, the master's report and recommended decision will be mailed or delivered to the 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 adversely affected by the report and recommended decision may file objections within 30 days of the mailing or delivery of the report. 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 is supported by the evidence of record.

(1) If the judge approves the report and finds that the recommended decision is supported by the evidence of record and is consistent with applicable law, the judge will enter an order adopting the recommended decision.

(2) If the judge does not approve the report or finds that the recommended decision is not supported by the evidence of record, the judge may remand the case to the master for further proceedings consistent with instructions in the remand order, or the judge may hear the case de novo and enter a decision.

(3) If the judge finds 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, the judge will issue an order adopting the findings of fact, making conclusions of law, and entering a decision.

§ 30.123 Will the judge determine matters of status and nationality?

(a) The judge in a probate proceeding will determine:

(1) The status of eligible heirs or devisees as Indians;

(2) 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 is terminated.

(b) A judge may make determinations under this section in a current probate proceeding or in a completed probate case after a reopening without regard to a time limit.

§ 30.124 Can a judge find a person to be dead by reason of unexplained absence?

(a) A judge may make a finding that an heir, devisee, or a person for whom a probate case has been opened is dead, by reason of extended unexplained absence, and include the date of death in the finding. The judge will make a finding of death only upon clear and convincing evidence.

(b) In any proceeding to determine whether a person is dead, the following rebuttable presumptions apply:

(1) If credible evidence establishes that the absent person has had contact with any person or entity during the 6-year period preceding the hearing, the absent person will be presumed alive; and

(2) If clear and convincing evidence establishes that none of the persons or entities with whom the absent person was known to have had regular contact previously has had any such contact during the 6-year period preceding the hearing, the absent person will be presumed dead.

§ 30.125 May a judge reopen a probate case to correct errors and omissions?

(a) Upon the written request of an interested party, or on the judge's own motion, at any time, a judge has the specific 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;

(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; or

(5) Address any other error deemed by the judge sufficient to order the case to be reopened.

(b) The judge will notify interested parties if a probate case is reopened and will refer the case for proceedings in accordance with this part.

§ 30.126 What happens if property was omitted from the inventory of the estate?

(a) This section applies when, after issuance of a decision and order in a formal probate proceeding, it is found that trust or restricted property or interest therein belonging to a decedent has not been included in the inventory.

(1) The inventory can be modified to include the omitted property for distribution under the original decision.

(2) Modification to include the omitted property in the decedent's inventory may be made either administratively by BIA or by a modification order by a judge.

(3) Copies of all modifications must be furnished to the agency and to all those persons who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, BIA must notify the judge. The judge will:

(1) Conduct a hearing, if necessary, and issue a decision; and

(2) File a record of the proceeding with the designated LTRO.

§ 30.127 What happens if property was improperly included in the inventory of the estate?

(a) When, after a decision and order in a formal probate proceeding, it is found that property has been improperly included in the inventory of an estate, the inventory must be modified to eliminate this property. A petition for modification may be filed by the superintendent of the agency where the property is located, or by any interested party.

(b) A judge will review the merits of the petition and record of the title from the LTRO upon which the modification is to be based and enter an appropriate decision. If the decision is entered without a formal hearing, the judge must give notice of the action to all parties whose rights are adversely affected, allowing them 30 days in which to show cause why the decision should not then become final.

(c) Where appropriate, the judge may conduct a formal hearing at any stage of the modification proceeding. The hearing must be scheduled and conducted in accordance with the rules of this part. The judge will enter a final decision based on his or her findings, modifying or refusing to modify the property inventory. The judge's decision will become final at the end of 30 days from the date it is mailed, unless an aggrieved party files a notice of appeal within that period. Notice of entry of the decision must be given in accordance with this part.

(d) A party aggrieved by the judge's decision may appeal it to the Board.

(e) BIA must lodge the record of all proceedings with the designated LTRO.

§ 30.128 What happens if an error in BIA's estate inventory is alleged during the probate proceeding?

(a) 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. Alleged inaccuracies may include, but are not limited to, the following:

(1) Trust property interests should be removed from the inventory because the decedent executed a gift deed or a gift deed application during the decedent's lifetime, and BIA had not, as of the time of death, determined whether to approve the gift deed or gift deed application;

(2) Trust property interests should be removed from the inventory because a deed through which the decedent acquired the property is invalid;

(3) Trust property interests should be added to the inventory because the decedent attempted to acquire additional trust property interests during the decedent's lifetime, and BIA had not, as of the time of death, determined whether to approve the acquisition; and

(4) Trust property interests included in the inventory are improperly described.

(b) When an error in the estate inventory is alleged, the OHA deciding official will refer the matter to BIA for resolution in accordance with procedures found at 25 CFR parts 150 (Land Records and Title Documents), 151 (Land Acquisitions), and 152 (Issuance of Patents in Fee, Certificates of Competency, Removal of Restrictions, and Sale of Certain Indian Lands), together with the appeal procedures found at 25 CFR part 2 (Appeals from Administrative Actions).

(1) If a final determination resolving the inventory challenge is made before a final decision is issued in the probate proceeding, the probate decision will reflect the inventory determination.

(2) If a final determination resolving the inventory challenge is not made before a final decision is issued in the probate proceeding, the final probate decision will include a reference to the pending inventory challenge and note that the probate decision is subject to administrative modification once the inventory dispute has been resolved.

Subpart D—Recusal of a Judge or ADM

§ 30.130 When must a judge or attorney decision maker (ADM) recuse himself or herself from a probate case?

A judge or attorney decision maker (ADM) must recuse himself or herself from a probate case in which the judge or ADM determines:

(a) That the judge or ADM has a conflict of interest; or

(b) That the judge's or ADM's impartiality may reasonably be questioned under recognized canons of judicial ethics.

§ 30.131 Where may a judge or ADM seek guidance on recusal?

A judge or ADM may consult and seek guidance for the determinations listed in § 30.130 from:

(a) The code of judicial conduct for any State in which the judge or ADM is a member of the bar; or

(b) The code of judicial conduct for the Federal courts.

§ 30.132 May an interested party to a probate proceeding excuse a judge or ADM from hearing a case?

No. No party to a probate proceeding may excuse a judge or ADM from hearing a case.

§ 30.133 May an interested party to a probate proceeding request that a judge or ADM recuse himself or herself?

Yes. If you are an interested party to a probate proceeding, you may request that a judge or ADM recuse himself or herself by filing a written motion for recusal.

(a) The motion for consideration of recusal must state, by affidavit or verified motion, the facts and circumstances that you ask the judge or ADM to consider.

(b) You must file a motion for recusal before the judge or ADM files the decision and order in a probate proceeding.

(c) A motion for recusal may not delay proceedings unless you also request, and the judge or ADM grants, an extension of time for the hearing of the motion.

§ 30.134 What must the judge or ADM consider when deciding whether to recuse himself or herself?

The grounds for which a judge or ADM must consider recusal include, without limitation:

(a) Personal bias or prejudice concerning an interested party or an interested party's attorney;

(b) Personal knowledge of disputed evidentiary facts obtained before the filing of the probate case or obtained ex parte during the pendency of the probate proceeding;

(c) Prior service as an attorney concerning a matter or for an interested party in the current probate proceeding;

(d) Service as a witness, conservator, guardian, or guardian ad litem in a case involving an interested party; and

(e) Economic interest in the outcome of the case by the judge or ADM, the spouse of the judge or ADM, or a person within the third degree of relationship to the judge or ADM or the judge's or ADM's spouse.

§ 30.135 What action will the judge or ADM take after deciding to recuse himself or herself?

If the judge or ADM decides to recuse himself or herself, the judge or ADM must immediately file a certificate of recusal in the file of the affected 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.

§ 30.136 How will the case proceed after the judge 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 § 30.135 of the appointment.

§ 30.137 Can I appeal the judge's or ADM's recusal decision?

If you have filed a motion seeking recusal of a judge or ADM under § 30.133 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 subtitle.

Subpart E—Claims

§ 30.140 When may I file a claim against the probate estate?

(a) A claim by a person or entity as a creditor against the estate of an Indian may be filed with BIA before BIA transfers the probate file to OHA.

(b) Claims by a creditor also may be filed through OHA with the judge assigned to the case.

(1) Claims filed by a creditor through OHA must be filed before the conclusion of the first hearing.

(2) Claims that are not filed by the conclusion of the first hearing will be barred forever.

§ 30.141 How must I file a creditor claim against the probate estate?

(a) A creditor must submit an affidavit under oath setting forth the debt alleged and an itemized statement of the debt, including copies of any documents necessary to prove the indebtedness, such as signed contracts, signed notes, mortgages, account records, billing records, and journal entries.

(b) The creditor's affidavit also must state 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; and

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

(c) The itemized statement must 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 notification by the decedent that the amount claimed was disputed by the decedent.

§ 30.142 Will a judge authorize payment of a claim from the trust estate where the decedent's non-trust estate may be available?

No claim will be paid from trust or restricted property if the judge determines that the decedent's non-trust estate may be available to pay the claim.

§ 30.143 Are there any categories of claims that may not be allowed?

(a) Claims for care may 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 cannot be allowed if it is:

(1) Based on a written or oral contract, express or implied; and

(2) The claim has existed for such a period as to be barred by the applicable tribal or state laws at date of decedent's death.

(c) Claims sounding in tort not reduced to judgment in a court of competent jurisdiction, and other unliquidated claims not properly within the jurisdiction of OHA, are barred.

(d) Claims of a State or any of its political subdivisions, are barred if they relate to:

(1) Payments for general assistance, welfare or similar assistance;

(2) Social security; or

(3) Claims for old-age assistance.

§ 30.144 May the judge authorize payment of the costs of administering the estate?

Upon 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 that part or all of an otherwise valid claim is unreasonable, 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?

(a) Except as prohibited by law, all trust personalty of a decedent on hand or accrued at time of death, including bonds, unpaid judgments, and accounts receivable, may be used for the payment of claims, whether the right, title, or interest that is taken by an heir or devisee remains in trust or passes out of trust.

(b) Trust personalty that accrues after the date of the decedent's death from trust or restricted property is not available for payment of claims against the estate.

§ 30.147 What happens if there is not enough trust personalty to pay all the claims?

If, at the date of death, there is not enough trust personalty to pay all claims, the claims may be ordered paid on a pro rata basis or disallowed in their entirety. 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 against claims after the date of death be paid?

Interest or penalties charged after the date of death will not be paid.

Subpart F—Consolidation and Settlement Agreements

§ 30.150 If the interested parties agree to settle matters among themselves, what does a judge do?

(a) A judge may approve a settlement agreement among interested parties resolving any issue in the probate proceeding if the judge finds that:

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

(2) All parties to the agreement understand the effect of the agreement on their rights; and

(3) It is in the best interest of the parties to settle.

(b) In considering the proposed settlement agreement, the judge may consider evidence of the respective values of specific items of property and all encumbrances.

(c) If the judge approves the settlement agreement under paragraph (a) of this section, the judge will issue an order approving the settlement agreement and distributing the estate in accordance with the agreement.

§ 30.151 May the devisees or eligible heirs in a probate proceeding consolidate their interests?

The devisees or eligible heirs may consolidate interests under 25 U.S.C. 2206(e) in trust property already owned by the heirs and under 25 U.S.C. 2206(j)(9) in property from the inventory of the decedent's estate. This does not include interests in Alaska.

(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 consolidation, the agreement may include conveyances among decedent's devisees or eligible heirs of:

(i) Interests in trust or restricted land in the decedent's trust inventory; and

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

(2) The parties must offer evidence sufficient to satisfy the judge of the percentage of ownership held and offered by a party. They may offer evidence of the value of each interest in trust or restricted land included in the agreement if the interest is not part of the decedent's estate.

(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 rules and requirements of the Secretary otherwise applicable to conveyances by deed.

(b) If the judge approves an agreement, the judge will issue an order distributing the estate in accordance with the agreement.

(c) In order to approve an agreement, the judge must find that:

(1) The agreement to consolidate is voluntary;

(2) All parties to the agreement know the material facts;

(3) All parties to the agreement understand the effect of the agreement on their rights; and

(4) The agreement accomplishes consolidation.

(d) An interest included in an approved agreement may not be purchased at probate without consent of the owner of the consolidated interest.

§ 30.152 May the parties to a settlement agreement or consolidation agreement waive valuation of trust property?

The parties to a settlement agreement or to a consolidation agreement may waive valuation of trust property otherwise specified 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 a consolidation agreement or settlement agreement considered a partition or sale transaction?

An order issued by a judge approving a consolidation or settlement agreement will not be interpreted as a partition or sale transaction within the provisions of 25 CFR part 152.

Subpart G—Purchase at Probate

§ 30.160 What can be purchased at probate?

An eligible purchaser may purchase, during the probate of a trust or restricted estate, all or part of the estate of a person who died after June 20, 2006.

(a) Any interest in trust or restricted property, including a life estate that is part of the estate, may be purchased at probate with the following exceptions:

(1) If an interest is included in an approved consolidation agreement, that interest may not be purchased at probate without consent of the owner; and

(2) An interest that a devisee will receive under a valid will cannot be purchased without the consent of the devisee.

(b) A purchase option must be exercised before an order is entered and be included as part of the order in the estate.

§ 30.161 Who can purchase at probate?

An eligible purchaser is:

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

(b) Any person who owns an undivided trust or restricted interest in the same parcel of land;

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

(d) The Secretary on behalf of the tribe.

§ 30.162 Does property purchased at probate remain in trust or restricted status?

The property interests purchased at probate must remain in trust or restricted status.

§ 30.163 Is consent required for a purchase at probate?

(a) The heir's consent is not required if:

(1) The interest the heir will receive in the parcel, subject to the probate proceeding, is less than 5 percent of the entire undivided ownership interest in the parcel; and

(2) The heir was not residing on the parcel on the date of the decedent's death.

(b) The heir's consent is required if:

(1) The interest the heir will receive in the parcel, subject to the probate proceeding, is 5 percent or more of the entire undivided ownership interest in the parcel; or

(2) The interest the heir will receive is less than 5 percent of the entire undivided ownership interest in the parcel and the heir was residing on the parcel on the date of the decedent's death.

§ 30.164 What must I do to purchase at probate?

Any eligible purchaser must submit a written request to OHA to purchase at probate before the decision and order issues.

§ 30.165 Who will OHA notify of a request to purchase at probate?

OHA will provide notice of a request to purchase at probate to:

(a) The heirs or devisees and the Indian tribe with jurisdiction over the interest, by first class mail;

(b) The BIA agency with jurisdiction over the interest, by first class mail;

(c) All parties who have submitted a written request for purchase, by first class mail; and

(d) All other eligible purchasers, by posting written notice in at least five conspicuous places in the vicinity of the place of hearing and one conspicuous place at the agency with jurisdiction over the parcel.

§ 30.166 What will the notice of the request to purchase at probate include?

The notice posted by OHA will include:

(a) The manner of sale;

(b) The date, time, and place of the sale;

(c) A description of the interest to be sold; and

(d) The appraised market value of the parcel obtained from BIA with the probate file containing the interest to be sold and an estimate of the market value allocated to the interest being sold.

§ 30.167 How does OHA decide whether to grant a request to purchase at probate?

OHA will sell the interest to the eligible purchaser submitting the highest bid at not less than the market value of the interest.

§ 30.168 What will the judge consider in determining the market value of an interest?

(a) An appraisal of the market value of the interest to be sold at probate must be based upon an appraisal which gives appropriate consideration to the fractionated ownership interest in the parcel. The appraisal must meet the standards in the Uniform Standards for Professional Appraisal Practice (USPAP).

(b) The judge will use the appraised market value of the interest being sold and determine the allocation of proceeds of sale among the heirs based upon the fractional ownership interests in the parcel.

(c) In allocating the proceeds of the sale of an interest subject to a life estate, the allocation among the holder of the life estate and the holders of any remainder interests, the judge must use the ratios in 25 CFR part 179.

(d) The judge will order the distribution of the sale proceeds in accordance with the determination made in paragraph (b) of this section.

§ 30.169 If I do not agree with the appraised market value, what can I do?

(a) If you are a potential purchaser or the heir whose interest is to be sold and you disagree with the appraised market value, you may:

(1) File a written objection with OHA within 30 days from the mailing of notice provided under § 30.167, stating the reasons for the objection; and

(2) Within 15 days after filing a written objection, submit any supporting documentation showing why the market value should be modified.

(b) The judge will consider any objections, make a determination of the market value and whether to approve the purchase under § 30.169, and notify all interested parties.

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

(a) If you are an interested party adversely affected by the judge's determination under § 30.171(b), you may file a written objection with the judge within 15 days after the mailing of the determination under § 30.171(b).

(1) The written objection must state the reasons for the objection and request interlocutory appeal of the determination to the Board.

(2) You must furnish a copy of the written objection to the other interested parties and the agencies, stating that you have done so in your written objection.

(b) If the objection is timely filed, the judge must forward a certified copy of the complete record in the case to the Board for review of the determination. The judge will not issue the decision in the probate case until the Board has issued its decision on interlocutory review of the determination.

(c) If the objection is not timely filed, the judge will issue an order denying the request for review as untimely and will furnish copies of the order to the interested parties and the agencies. If you disagree with the decision of the judge as to whether your objection was timely filed, you may file a petition for rehearing under § 30.238 after the judge issues a decision under § 30.236.

§ 30.171 What happens when OHA grants a request to purchase at probate?

When OHA grants a request to purchase at probate, it will:

(a) Notify the successful bidder by first class mail; and

(b) Notify OST, the agency that prepared the probate file, and the agency having jurisdiction over the interest sold, including the following information:

(1) The estate involved;

(2) The parcel and interest sold;

(3) The identity of the successful bidder; and

(4) The amount of the bid.

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

The successful bidder must pay to OST, by cashier's check or money order via the lockbox, or electronic funds transfer, the full amount of the purchase price within 30 days from the mailing of the notice of successful bid.

§ 30.173 What happens after the successful bidder submits payment?

(a) When OST receives payment, it will notify OHA, and the judge enters an order approving the sale and directing the LTRO to record the transfer of title to the interest of the successful bidder. The order will state the date of the title transfer, which is the date payment is received.

(b) OST will:

(1) Deposit the payment in the decedent's estate account; and

(2) Distribute the money from the sale to the heir, devisee, or spouse whose interest was sold, in accordance with each respective interest.

§ 30.174 What happens if the successful bidder does not pay within 30 days?

(a) If the successful bidder fails to pay the full amount of the bid, the sale will be canceled and the interest in the trust or restricted property will be distributed as determined by the judge.

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

(c) Any partial payment received from the successful bidder will be returned.

Subpart H—Renunciation of Interest

§ 30.180 May I give up an inherited interest in trust or restricted property or trust personalty?

If you are 18 years old and not under a legal disability, you may renounce an inherited interest in trust or restricted property, including a life estate, or in trust personalty.

§ 30.181 How do I renounce an inherited interest?

You can renounce an inherited interest in trust personalty or restricted property, including an inherited life estate. To do this, you must file with the judge, before the filing of the final order in the probate case, a signed and acknowledged declaration specifying the interest renounced

(a) You may retain a life estate in specific interests in trust or restricted land and renounce the remainder interests by filing the written declaration with the judge.

(b) If you renounce an interest in trust or restricted land under 25 U.S.C. 2206, you may either:

(1) Designate an eligible person or entity meeting the requirements of § 30.184 as the recipient; or

(2) Renounce without making a designation.

(c) If you choose to renounce your interests in favor of a designated recipient, the judge must notify the designated recipient.

§ 30.182 Who may receive a renounced interest in trust or restricted land?

If the interest renounced is an interest in land, a person may renounce only in favor of:

(a) An eligible heir of the testator;

(b) A person eligible to be a devisee of the interest, if the renouncing person is a devisee of the interest under a valid will, and is:

(1) A lineal descendant of the testator;

(2) A person who owns a preexisting undivided trust or restricted interest in the same parcel;

(3) Any Indian; or

(4) The tribe with jurisdiction over the interest.

§ 30.183 Who may receive a renounced interest of less than 5 percent in trust or restricted land ?

An interest in trust or restricted land that is not disposed of by a valid will and that represents less than 5 percent of the entire undivided ownership of a

parcel of land may be renounced in favor of a single heir. The single heir may renounce only in favor of the Indian tribe with jurisdiction over the interest or one person who is:

(a) Another eligible heir;

(b) An Indian related to the heir by blood; or

(c) A co-owner of another trust or restricted interest in the same parcel.

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

If the interest renounced is an interest in trust personalty, a person may renounce in favor of any person or entity.

(a) The Secretary will maintain and continue to manage trust personalty transferred by renunciation to a following person or entity:

(1) A lineal descendant of the testator;

(2) A person who owns a preexisting undivided trust or restricted interest in the same parcel of land;

(3) The tribe with jurisdiction over the interest in land; or

(4) Any Indian.

(b) The Secretary will directly disburse and distribute trust personalty transferred by renunciation to a person or entity who is not eligible under § 30.185.

§ 30.185 Can my designated recipient refuse to accept the interest?

Yes. The recipient may refuse to accept the interest. The refusal must be made in writing and filed before the judge. If the designated recipient of the renounced interest refuses to accept that interest, then the renounced interest passes to the heirs of the decedent as if the person renouncing the interest had predeceased the decedent.

§ 30.186 Are renunciations that predate the American Indian Probate Reform Act of 2004 valid?

Any renunciation filed and implemented in a probate order issued before the effective date of the American Indian Probate Reform Act of 2004 is ratified.

§ 30.187 May I revoke my renunciation?

No. A written renunciation is irrevocable after the judge accepts the renunciation and enters the final order in the probate proceeding.

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

No. An interest in trust or restricted property renounced under § 30.181 is not considered to have vested in the renouncing heir or devisee, and the renunciation is not considered a transfer by gift of the property renounced to the renouncing person.

(a) If the renunciation directs the interest to an eligible person or entity, the interest passes directly to that person or entity;

(b) If the renunciation does not direct the interest to an eligible person or entity, the renounced interest passes to the heirs of the decedent as if the person renouncing the interest had predeceased the decedent.

Subpart I—Summary Probate Proceedings

§ 30.200 What is a summary probate proceeding?

(a) A summary probate proceeding is the consideration of a probate case without a formal hearing on the basis of the probate file received from BIA. A summary probate proceeding may be conducted by a judge, an ADM, or a master, as determined by the supervising judge.

(b) A decedent's estate may be processed summarily if the estate involves only cash and the total value of the estate does not exceed $5,000 on the date of death.

§ 30.201 What does a notice of a summary probate proceeding contain?

The notice of summary probate proceeding will contain the following:

(a) Notice of the right of any interested party to request treatment of the probate case as a formal probate proceeding;

(b) A copy of the OHA–7, a statement of the IIM account balance, and a copy of the death certificate, except to a creditor who is not an eligible heir;

(c) A notice that the only claim of a creditor that will be considered is that of a person defined as an eligible heir under these regulations, or of any person or entity who filed as a creditor with the BIA before the transfer of the probate file to OHA, with a copy of the claim;

(d) A notice that an interested party may renounce or disclaim an interest, in writing, either generally or in favor of a designated person or entity; and

(e) Any other information determined to be relevant by OHA.

§ 30.202 May I request that a summary probate proceeding be replaced by a formal probate proceeding?

Yes. Interested parties who are devisees or eligible heirs have 30 days from the mailing of the notice to file a written request for a formal probate hearing, to file a claim as a creditor, or to renounce or disclaim an interest in the estate.

§ 30.203 What must a summary probate decision contain?

The written decision in a summary probate proceeding must be in the form of findings of fact and conclusions of law, with a proposed decision and order of distribution.

(a) The decision must contain all of the following elements:

(1) One of the following:

(i) If the decedent left legal heirs or devisees, the names of each heir or devisee with the identifying numbers assigned by BIA, their birth dates, relationships to the decedent, the distribution of shares of each heir or devisee, and the names of the recipients of renounced or disclaimed interests; or

(ii) If the decedent did not leave legal heirs or devisees, a statement to that effect;

(2) Citations to the law of descent and distribution in accordance with which the decision is made;

(3) A statement allowing or disallowing claims against the estate in accordance with this part, and an order directing the amount of payment of all approved claims;

(4) A statement approving or disapproving any renunciation;

(5) A statement of whether the heirs or devisees are Indian, non-Indian, or eligible to hold property in trust status;

(6) A statement advising all interested parties of their right to seek de novo review in accordance with this part, and that, if they fail to do so, the decision will become final 30 days after the mailing of the written decision; and

(7) In a testate case only, a statement that:

(i) Approves or disapproves a will;

(ii) Interprets provisions of the approved will; and

(iii) Describe the share each devisee is to receive, subject to any encumbrances.

(b) When the judge or ADM issues a decision, the judge must issue a notice of the decision to all parties who have or claim any interest in the estate, and mail or deliver a copy of the notice, together with a copy of the decision, to each affected agency and to each interested party.

§ 30.204 How do I seek review of a summary probate proceeding?

(a) If you are an interested party who is adversely affected by the written decision in a summary probate proceeding, you may seek de novo review of the case by filing a request with the OHA office that issued the decision.

(b) The request for de novo review must be in writing and signed, and must contain the following information:

(1) The name of the decedent;

(2) A description of the requestor's relationship to the decedent;

(3) An explanation of what errors the requestor alleges were made; and

(4) An explanation of how the requestor is adversely affected by the decision.

(c) You must send or deliver the request to OHA within 30 days after the date the decision is mailed.

§ 30.205 What happens after I file a request for de novo review?

(a) Within 10 days of receiving a request for de novo review, OHA will notify the agency that prepared the probate file, all other affected agencies, and all interested parties of the de novo review, and assign the case to a judge.

(b) The judge will review the merits of the case, conduct a hearing as necessary or appropriate under the regulations in this part, and issue a new decision in accordance with this part.

§ 30.206 What happens if nobody files for de novo review?

If no interested party requests de novo review within 30 days of the date of the written order, OHA will send:

(a) The final order confirming the written decision to all interested parties with notice of the right to file a petition for rehearing under this part;

(b) The complete original record and the final order to the agency that prepared the probate file; and

(c) A copy of any relevant portions of the record to any other affected agency.

Subpart J—Formal Probate Proceedings

Notice

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

OHA will provide notice of the formal probate proceeding by mail and by posting. A posted and published notice may contain notices for more than one hearing, and need only specify the names of the decedents, the captions of the cases and the dates, times, places and purposes of the hearings.

(a) OHA will send the notice to potential heirs and devisees named in the probate file and other interested parties identified by OHA in the case. The notice must:

(1) Be sent by first class mail during the pendency of the probate proceeding to potential heirs and devisees and other interested parties identified by OHA in the case;

(2) Be sent and posted at least 20 calendar days before the date of hearing, not counting the hearing date; and

(3) Include a certificate of mailing with the date of mailing, signed by the person mailing the notice.

(b) A presumption of actual notice exists with respect to any person to whom OHA sent a notice under paragraph (a) of this section, unless the notice is returned by the postal service unclaimed by the addressee.

(c) OHA must post the notice in each of the following locations:

(1) Five or more conspicuous places in the vicinity of the designated place of hearing;

(2) Each agency office with jurisdiction over each parcel of trust or restricted property in the estate; and

(3) Any other places and on other reservations that the judge deems appropriate.

§ 30.211 Will the notice be published in a newspaper?

The judge may cause a notice of hearing to be published in a newspaper of general circulation in the vicinity of the designated place of hearing not fewer than 20 calendar days before the hearing. The cost of publication may be paid from the assets of the estate under § 30.144.

§ 30.212 Can I waive notice of the hearing, the time limits, or form of notice?

(a) An interested party may waive notice of hearing, the time limits, and the form of notice by:

(1) Appearing at the hearing and participating in the hearing without objection; or

(2) Filing a written waiver with the judge before the hearing.

(b) The requirements for notice by posting may not be waived.

§ 30.213 What notice to a tribe is required in a formal probate proceeding?

In probate cases in which the decedent died on or after June 20, 2006:

(a) The judge must notify any tribe with jurisdiction over the trust or restricted land in the estate of the pendency of a proceeding; and

(b) The 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 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, the drafter of the will, and the attesting witnesses to the will;

(d) Cite this part as the authority and jurisdiction for holding the hearing;

(e) Inform 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 on penalty of losing 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 may propose additional interests for consolidation, and include notice of the opportunity for renunciation either generally or in favor of a designated recipient;

(g) In estates for decedents whose date of death is on or after June 20, 2006, include notice of the possibilities of purchase and sale of trust or restricted property by heirs, co-owners, a tribe, or the Secretary; and

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

Depositions, Discovery, and Prehearing Conference

§ 30.215 How can I obtain documentation related to the probate proceeding?

(a) An interested party may make a written demand to produce documents for inspection and copying or photographing. This demand:

(1) May be made at any stage of the proceeding before the conclusion of the hearing;

(2) May be made upon any other party to the proceeding or upon 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, in accordance with the rules governing the custody and control of the records.

(c) Documentation may be made available to a member of the public, subject to any law to the contrary, who is not an interested party upon payment of the cost of producing the documents, as determined reasonable by the custodians of the records.

§ 30.216 How does an interested party obtain permission to take depositions?

(a) Depositions may be taken upon stipulation of the parties or by order of the judge.

(b) When an interested party files a written application, the judge may order the taking of the sworn testimony of any person by deposition upon oral examination for the purpose of discovery or for use as evidence at a hearing. The application must set 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 application.

(c) The judge may order the taking of a deposition. The order 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 in paragraphs (c)(2) and (c)(3) of this section need not be the same as those requested in the application under paragraph (b) of this section.

§ 30.217 How is a deposition taken?

(a) The witness must appear before the judge or before an officer authorized to administer oaths by the law of the United States or by the law of the place of the examination.

(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 upon 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 ordered and taken in accordance with the provisions of 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:

(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 does an interested party obtain written interrogatories and admission of facts and documents?

(a) An interested party may serve upon any other interested party written interrogatories and requests for admission of facts and documents. The interested party may do this only 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 from the date of service of the interrogatories or requests, or within another deadline agreed upon 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:

(a) Upon timely motion by any interested party, if that party also gives proper 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 without good cause to comply with 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 as the judge determines just and proper.

(b) Failure to comply with discovery includes failure to:

(1) Comply with a request for the production of a document;

(2) Appear for examination;

(3) Respond to interrogatories or requests for admissions; 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 Can a judge compel a witness to appear and testify at a hearing?

(a) The judge can issue a subpoena for a witness to appear and testify at a hearing and to bring documents or other material to the hearing.

(1) An interested party 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 motion or request in writing and mail copies of the order to all the interested parties.

(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.

(1) If the judge denies the request, the judge may assign costs for the transportation of the witness to the place of hearing or deposition.

(2) The judge will inform the interested parties of the request and the decision in writing in a timely manner.

(c) A judge may assign the costs of requiring a non-party to appear at a hearing or a deposition.

(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.

(e) The judge may seek by petition to the appropriate United States District Court the invocation of powers of contempt when necessary and appropriate to ensure due process and orderly prosecution of probate cases under the law.

§ 30.225 Are probate hearings open to the public?

The probate hearings conducted under this part are open to public attendance.

(a) In the exercise of discretion, the judge may close the hearing for the testimony of a party or other witness and exclude all persons but the interested parties.

(b) Except as the judge finds necessary to comply with due process or for other good cause shown, and subject to transfer to the IBIA on appeal, the judge may seal the record or transcript of testimony taken during a closed hearing.

§ 30.226 Must testimony in a probate proceeding be under oath or affirmation?

Yes. Testimony in a probate proceeding must be under oath or affirmation.

§ 30.227 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.

§ 30.228 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 probate; and

(2) Not privileged under Federal law, or 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 determines the weight given to any evidence admitted.

(h) Any party objecting to the admission or exclusion of evidence shall concisely state the grounds. A ruling on every objection must appear in the record.

(i) There is no privilege under this part as to any communication between a decedent and any attorney advising the decedent as to any matter relevant to an issue between parties, all of whom claim through that decedent.

§ 30.229 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.

§ 30.230 What if approval of the self-proved will, codicil, or revocation is contested?

(a) If the approval of a will, codicil, or revocation is contested, the attesting witnesses who are in the reasonable vicinity of the place of hearing and who are of sound mind must be produced and examined.

(b) If none of the attesting witnesses resides near the place of hearing at the time appointed for proving the will, the judge may:

(1) Order the deposition of any available attesting witnesses 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.

§ 30.231 Who pays witnesses' costs?

(a) Interested parties who desire a witness to testify at a hearing must make their own financial and other arrangements for the witness.

(b) The judge may order payment of per diem, mileage, and subsistence at a rate not to exceed that allowed to witnesses called in the U.S. District Courts.

(c) In the order for payment, the judge must specify whether such costs are to be allocated and charged against the interest of the party calling the witness or against the estate.

(d) Costs of administration allowed against the estate under paragraphs (b) or (c) of this section will have a priority for payment greater than that for any creditor claims allowed.

§ 30.232 May a judge schedule a supplemental hearing?

Yes. A judge may schedule a supplemental hearing if he or she deems it necessary.

§ 30.233 What will the official record of the probate case contain?

After the completion of the hearing, the judge will compile the official record. 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) Special or interim 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.

§ 30.234 What will the judge do with the original record?

(a) The judge must send the original record to the designated LTRO in accordance with 25 CFR part 150.

(b) The judge must send a copy of:

(1) The order to the agency originating the probate, and

(2) The order and inventory to other affected agencies.

§ 30.235 What happens if a hearing transcript has not been prepared?

When a hearing transcript has not been prepared, 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 the original record returned to the LTRO must contain a statement indicating that no transcript was prepared.

Decisions in Formal Proceedings

§ 30.236 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 proceedings and issue a written decision.

(a) In all cases, the decision will:

(1) List the names of each heir or devisee with the identifying numbers as assigned by BIA, birth dates, and relationship to the decedent;

(2) Describe the distribution of shares of each of the heirs, in addition to the names of the recipients of renounced or disclaimed interests;

(3) Provide the information necessary to identify the persons and property interests involved in any settlement or consolidation agreement, renunciations of interest, and purchases at probate;

(4) Allow or disallow claims against the estate in accordance with this part, and order the amount of payment for all approved claims;

(5) Approve or disapprove any renunciation, settlement agreement, consolidation agreement, or purchase at probate;

(6) State whether the heirs or devisees are Indian, non-Indian, or eligible to hold property in trust status; and

(7) Include a determination of any rights of dower, curtesy, or homestead that may constitute a burden upon the interest of the heirs.

(b) In a testate case, the decision will also:

(1) Approve or disapprove a will;

(2) Interpret provisions of the approved will; and

(3) Describe the share each devisee is to receive, subject to any encumbrances.

§ 30.237 What notice of the decision will the judge provide?

When the judge issues a decision, the judge must issue a notice of the decision to all parties who have or claim any interest in the estate, and mail or deliver a copy of the notice, together with a copy of the decision, to each affected agency and to each interested party. The decision will not become final until the expiration of the 30 days allowed for the filing of a petition for rehearing by aggrieved parties.

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

(a) Any interested party may file with the judge a written petition for rehearing within 30 days after the date on which notice of the decision is mailed.

(b) If the petition is based on newly-discovered evidence, it must:

(1) Be accompanied by affidavits or declarations of witnesses stating fully the content of the new evidence; and

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

(c) A petition for rehearing must state specifically and concisely the grounds on which it is based.

(d) The judge must forward a copy of the petition for rehearing to the affected agencies.

§ 30.239 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.

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

(a) If proper grounds are not shown, or if the petition is not timely filed, the judge will issue an order denying the petition for rehearing and setting forth the reasons and furnish copies of the order to the petitioner, the agencies, and the interested parties.

(b) If the petition appears to show merit, the judge must:

(1) Cause copies of the petition and supporting papers to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition;

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

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

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

(d) Upon entry of a final order, the judge must distribute the order as provided in this part.

§ 30.241 Can I submit another petition for rehearing?

No. Successive petitions for rehearing are not permitted. The jurisdiction of the judge terminates upon the issuance of a decision finally disposing of a petition for rehearing, except for:

(a) The issuance of necessary orders nunc pro tunc to correct clerical errors in the decision; and

(b) The reopening of a case under this part.

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

The decision will become final upon the expiration of the 30 days allowed for the filing of a notice of appeal, as provided in this part.

§ 30.243 Can a closed probate case be reopened?

(a) A person claiming an interest in an estate may file a petition for reopening a closed probate case with the OHA office that issued the original decision.

(1) A case may be reopened based upon lack of notice or to prevent manifest injustice only.

(2) All grounds for the reopening must be set forth fully. If based on alleged errors of fact, all such allegations must be under oath and supported by affidavits.

(3) If the petition for reopening is based upon lack of notice of the original proceedings, the petition must be filed within 1 year from the date the petitioner discovered the error.

(b) A judge may reopen a case on the judge's own initiative.

§ 30.244 How will the judge address my petition for reopening?

(a) If the judge finds that proper grounds are not shown, the judge will issue an order denying the petition and giving the reasons for the denial. Copies of the judge's decision must be mailed to the petitioner, the agencies, and those persons whose rights would be affected.

(b) If the petition appears to show merit, the judge must cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest in the estate could be affected by the granting of the petition. These persons may respond to the petition by filing answers, cross-petitions, or briefs. The filings must be made within the time periods set by the judge.

§ 30.245 What happens if the judge reopens the case?

Upon reopening, the judge may affirm, modify, or vacate the former decision.

(a) Copies of the judge's decision on reopening must be mailed to the petitioner and to all persons who received copies of the petition.

(b) By order directed to the agency, the judge may suspend further distribution of the estate or income during the reopening proceedings.

(c) The judge must file the record made on a reopening petition with the

designated LTRO and must furnish a duplicate record to the affected agencies.

§ 30.246 When will the decision on reopening become final?

The decision on reopening will become final upon the expiration of the 30 days allowed for the filing of a notice of appeal, as provided in this part.

Subpart K—Miscellaneous Provisions

§ 30.250 When does the anti-lapse provision apply?

(a) The following table illustrates how the anti-lapse provision applies.

If . . .	And . . .	Then . . .
an Indian 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 so given by the will per stirpes

(b) For purposes of this section, relationship by adoption is equivalent to relationship by blood.

§ 30.251 What happens if an heir or devisee knowingly participates in the willful and unlawful killing of the decedent?

Any person who knowingly participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent, may not take, directly or indirectly, any inheritance or devise under the decedent's will. This person will be treated as if he or she had predeceased the decedent.

§ 30.252 Can a judge allow fees for attorneys representing interested parties?

(a) Except for attorneys representing creditors, the judge may allow fees for attorneys representing interested parties.

(1) At the discretion of the judge, these fees may be charged against the interests of the party represented or as a cost of administration.

(2) Petitions for allowance of fees must be filed before the close of the last hearing.

(b) Nothing in this section prevents an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing attorney fees is subject to a petition for rehearing and to an appeal.

§ 30.253 How must minors or other legal incompetents be represented?

Minors and other legal incompetents who are interested parties must be represented at all hearings by legally appointed guardians, or by guardians ad litem appointed by the judge. In appropriate cases, the judge may order the payment of fees to the guardian ad litem from the assets of the estate.

§ 30.254 What happens when a person dies without a valid will and has no heirs?

(a) The judge will determine whether a person with trust or restricted property died intestate and without heirs, and the judge will determine whether 25 U.S.C. 2206(a) applies.

(b) If 25 U.S.C. 2206(a) does not apply, the judge will order the escheat of the property in accordance with:

(1) 25 U.S.C. 373a if the trust or restricted property is not on the public domain; or

(2) 25 U.S.C. 373b if the trust or restricted property is on the public domain.

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 proceedings in Indian probate that relate to the tribal purchase of a decedent's interests in the trust and restricted land shown in the following table.

Location of trust or restricted land	Legislation 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).
(d) Devils Lake Sioux Reservation for the Spirit Lake Sioux Tribe	The Act of January 12, 1983 (Pub. L. 97–459, Section 108, 96 Stat. 2515).
(e) Standing Rock Sioux Reservation	The Act of June 17, 1980 (Pub. L. 96–276, section 4(b), 94 Stat. 537).

§ 30.261 What determinations with regard to a tribal purchase option will a judge make?

(a) In the exercise of probate authority, a judge will determine:

(1) The entitlement of a tribe to purchase a decedent's interests in trust or restricted land under the statutes;

(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, 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 upon 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 aggrieved party to pursue an enrollment application, grievance, or appeal through the established procedures applicable to the tribe.

§ 30.262 When will BIA furnish a valuation of a decedent's interests?

In all probates, at the earliest possible stage of the proceeding before issuance of a probate decision, BIA must furnish a valuation of the decedent's interests when the record reveals to the agency:

(a) That the decedent owned interests in land located on one or more of the reservations designated in § 30.260; and

(b) That one or more of the probable heirs or devisees who may receive the interests either:

(1) Is not enrolled in the tribe of the reservation where the land is located; or

(2) Does not have the required blood quantum in the tribe to hold the interests against a claim made by the tribe.

(c) The valuation must be made on the basis of the fair market value of the property, including fixed improvements, 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.

(e) BIA must include the valuation report in the probate package submitted to OHA. Interested parties may examine and copy, at their expense, the valuation report at the agency or the office of the judge.

§ 30.263 When is a final decision issued?

(a) When a decedent is shown to have owned land interests in any one or more of the reservations designated in § 30.260, the probate proceeding relative to the determination of heirs, approval or disapproval of a will, and the claims of creditors will first be concluded as final for the Department in accordance with 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 setting forth the apparent rights of the tribe as against affected heirs or devisees and the right of a surviving spouse whose interests are subject to the tribal purchase option to reserve a life estate in one-half of such 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, to which must be attached a copy of the valuation report, must be distributed to all interested parties in accordance with § 30.237.

§ 30.264 When may a tribe exercise its statutory option to purchase?

(a) A tribe may purchase all or a part of the available interests specified in the probate decision within 60 days 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.

(b) If a petition for rehearing or a demand for hearing has been filed, a tribe may purchase all or a part of the available interests specified in the probate decision within 20 days from the date of the decision on rehearing or hearing, whichever is applicable. A tribe may not, however, claim an interest less than the decedent's total interest in any one individual tract.

(c) Upon failure to timely file a notice of purchase, the right to distribution of all unclaimed interests will accrue to the heirs or devisees.

§ 30.265 How does a tribe exercise its statutory option to purchase?

To exercise its option to purchase, the tribe must file with the agency a written notice of purchase and resolution or other authorizing document, together with the tribe's certification that copies have been mailed on the same date to the judge and to the affected heirs or devisees.

§ 30.266 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.

§ 30.267 What if I disagree with the probate decision regarding tribal purchase option?

Any interested party aggrieved by the probate decision may, within 30 days from the date of the probate decision, file with the judge a written petition for rehearing in accordance with this part.

§ 30.268 May I demand a hearing regarding the tribal purchase option decision?

Yes. Any interested party aggrieved by the exercise of the tribal purchase option to purchase the interests in question or the valuation of the interests as set forth in the valuation report may file with the judge a written demand for hearing.

(a) The demand for hearing must be filed by whichever of the following deadlines is applicable:

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

(2) Within 30 days from the date of the decision on rehearing; or

(3) Within 20 days from the date 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 upon which it is based.

§ 30.269 What notice of the hearing will the judge provide?

The judge must, upon receiving a demand for hearing:

(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 as set forth in the valuation report will have the burden of proving his or her position.

(b) Upon 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 of 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 specify a right of appeal to the Board of Indian Appeals within 30 days from the date of the decision in accordance with §§ 4.320 through 4.326 of this subtitle.

(d) The judge must lodge the complete record relating to the demand for hearing with the LTRO as provided in § 30.234, furnish a duplicate record thereof to the agency, and 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 valuation report or as determined after hearing in accordance with § 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 the Superintendent's duties upon payment by the tribe?

Upon 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 § 30.234;

(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 and up to the date of transfer of title to the United States in trust for the tribe in accordance with § 30.273, all income received or accrued from the land interests purchased by the tribe will be credited to the estate and paid to the heirs.

Cross-reference: See 25 CFR part 2 for procedures for appeals to Regional Directors and to the Director of the Bureau of Indian Affairs.

Dated: July 26, 2006.

James E. Cason,

Associate Deputy Secretary, Department of the Interior.

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