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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 15

Office of the Secretary

43 CFR Part 30

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RIN 1094-AA55

American Indian Probate Regulations

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

ACTION: Proposed rule.

SUMMARY: The Department of the Interior (Department) is updating regulations governing probate of property that the United States holds in trust or restricted status for American Indians. Since the regulations were last revised in 2008, the Department identified opportunities for improving the probate process. These proposed revisions would allow the Office of Hearings and Appeals (OHA) to adjudicate probate cases more efficiently by, among other things, establishing an expedited process for small, funds-only estates, reorganizing the purchase-at-probate process so that estates may be closed more quickly, streamlining notice to co-owners who are potential heirs while adding electronic notice to all by website posting, and specifying which reasons justify reopening of closed probate estates. The proposed revisions would also enhance OHA's processing by adding certainty as to how estates should be distributed when certain circumstances arise that are not addressed in the statute.

DATES: Submit written comments by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. A Tribal consultation session will be held on February 9, 2021, at

2 p.m. Eastern Time and a public hearing will be held on February 11, 2021, at 2 p.m. Eastern Time (see Section V in the SUPPLEMENTARY INFORMATION for details).

ADDRESSES: You may submit comments by any one of the following methods:

- Federal rulemaking portal www.regulations.gov. The rule is listed under Agency Docket Number DOI-2019-0001.
- Email: Tribes may email comments to: consultation@bia.gov. All others should email their comments to: comments@bia.gov.
- Mail or Courier: Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street, NW., Mail Stop 4660 MIB, Washington, DC 20240.

We cannot ensure that comments received after the close of the comment period (see DATES) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking. Locations of the Tribal consultation session and public hearing are listed in Section V of this rule.

FOR FURTHER INFORMATION CONTACT: Elizabeth K. Appel, Director, Office of Regulatory Affairs & Collaborative Action – Indian Affairs, Elizabeth.appel@bia.gov, (202) 273-4680.

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I. Executive Summary

This proposed rule would update regulations that address how OHA probates property that the United States holds in trust or restricted status for American Indians. In October 2019, the Department sought input on a number of issues in the existing probate regulations through an advance notice of proposed rulemaking (ANPRM). 84 FR 58353 (October 31, 2019). The Department reviewed and considered the input and developed this proposed rule to improve the probate process. These proposed revisions would allow OHA to adjudicate probate cases more efficiently by, among other things, establishing an expedited process for small, funds-only estates, reorganizing the purchase-at-probate process so that estates may be closed more quickly, streamlining notice to co-owners who are potential heirs, and specifying which reasons justify reopening of closed probate estates. The proposed revisions would also enhance OHA's processing by adding certainty as to how estates should be distributed when certain circumstances arise that are not addressed in the statute.

II. Background

The Department probates thousands of estates each year for American Indian individuals who own trust or restricted property. The Bureau of Indian Affairs (BIA), OHA, and the Office of the Special Trustee for American Indians (OST) each play a role in the probate process. BIA compiles the information necessary to build a case record (i.e., the probate file) and then transfers the record to OHA for a judge to adjudicate and issue a final probate decision. In accordance with the final probate decision, OST distributes trust funds from the estate and BIA distributes the trust or restricted real property.

After the American Indian Probate Reform Act (AIPRA) was enacted in 2004, the Department codified implementing regulations at 25 CFR part 15 for the BIA and OST portions of the probate process and at 43 CFR part 30 for the OHA adjudication process. 73 FR 67255 (November 13, 2008); 76 FR 45198 (July 28, 2011). In 2016 and 2017, BIA reached out to Tribes for input on how the probate process was working, hosting a Tribal listening session in Spokane, Washington, on June 27, 2016, hosting two Tribal consultation teleconference sessions on July 12 and 13, 2016, and accepting written comment through January 4, 2017. More recently, in an effort to streamline the process and benefit Indian heirs and devisees, the Department identified current issues in the existing regulations and sought input, through an advance notice of proposed rulemaking (ANPRM), on where improvements may be made through regulatory change. 84 FR 58353 (October 31, 2019). The Department received six comment submissions in response to the ANPRM and addresses them, issue by issue, in Section III. Section III also discusses how the proposed rule addresses issues identified in the ANPRM. Through the process of evaluating the responses and further examining the current regulations, the Department identified additional changes that could improve current processes, which the proposed rule also incorporates. Section IV provides an overview of all the changes this proposed rule would make to the current regulations.

III. Proposed Resolution to Issues Identified in ANPRM and Response to Comments on the ANPRM

A. Issue 1: Gaps in AIPRA Intestacy Distribution

AIPRA sets out how a decedent's estate should be distributed when a decedent dies without a will (i.e., intestate) at 25 U.S.C. 2206(a), but fails to account for how trust personalty (including trust funds) should be distributed under two circumstances when there are no eligible family heirs under AIPRA: (1) the estate contains trust personalty but no trust real property; and (2) more than one Tribe has jurisdiction over trust real property in the estate. No comments were received on this issue in response to the ANPRM. The proposed rule addresses this issue by adding a new § 30.507 to clarify how trust personalty is distributed in these circumstances.

B. Issue 2: Overly burdensome “purchase at probate” process

AIPRA authorizes certain “eligible purchasers” to purchase trust and restricted interests in a parcel of land in the decedent's estate under certain circumstances. *See* 25 U.S.C 2206(o). The current regulations set out this “purchase at probate” process at 43 CFR part 30, subpart G, but the process has proven to be unwieldy because it requires the estate to be kept open indefinitely during the purchase at probate process and requires completion of the purchase at probate before issuing the final probate decision. This in turn requires OHA to make provisional determinations of heirs or devisees (creating the possibility of having to re-do the already-lengthy process). The proposed rule addresses this issue by overhauling the purchase at probate process in a manner that eliminates the need to keep probate cases open while providing certainty as to who the heirs and devisees are and what interests they have consented to selling before proceeding with the purchase at probate.

The Department received comments on two aspects of the purchase at probate issue, as follows:

1. Notice to Co-Owners of a Purchase at Probate

Current regulations provide that OHA will provide notice that it has received a written request to purchase at probate to certain parties by mail, and other parties by posting. *See* § 30.165. Co-owners of property in the estate are eligible purchasers, and under the current

regulations, receive notice of a request to purchase at probate through a posted notice. The ANPRM suggested instead requiring notice of a request to purchase at probate by mail to any co-owners who have submitted prior notice to the BIA that they want to receive notice of probates involving specified allotments.

The proposed rule's approach to purchase at probate requires OHA to provide notice of a pending purchase request in the probate decision. *See* proposed § 30.408. The current regulations include a provision requiring OHA to mail or deliver notice of the probate decision to interested parties. *See* § 30.237. That provision is unchanged by the proposed rule, so interested parties will receive notice of the purchase at probate request in the probate decision; however, the proposed rule revises the definition of "interested party" to exclude anyone who may or will inherit solely as a co-owner of an allotment. *See* proposed § 30.101. Another proposed revision allows anyone who may or will inherit solely as a co-owner of an allotment to obtain notice by filing a request for such notice with regard to any allotment they identify. *See* proposed § 30.114

The proposed rule would also eliminate posting of notices of purchase requests because posting adds significant time to the purchase process, while resulting in few, if any, co-owner requests to purchase. (Note, however, that notices of the hearing are still posted, so any interested co-owner may choose to participate in the hearing). The revisions would work to reserve notice to co-owners only for situations in which a co-owner has requested to receive notice, while continuing to meet due process requirements and reducing complexities in the probate process.

Comment: The revision would eliminate the right of eligible purchasers (co-owners) to notice when OHA receives a request to purchase at probate and would place the onus on the co-owners to provide notice that they wish to be told of purchase offers.

Response: Co-owners may purchase interests in the allotment at any time: before probate (with the consent of the interest owner), during probate (through purchase at probate, only if consent is given by the heir or devisee who would otherwise inherit the interest and all

requirements are met to permit a judge to approve the purchase at probate), or after probate (with the consent of the new interest owner). Given that the co-owner may purchase interests in the allotment at any time, and must always obtain the consent of another party to do so, removing notice by posting of another purchase offer during probate does not harm the co-owner in any way. If the co-owner would like to receive notice of a purchase at probate offer on the allotment, the co-owner may request such notice and receive it directly, by mail.

Comment: OHA must be required to notify co-owners by mail of an open period for registering their desire to be notified of a purchase at probate offer.

Response: Establishing an open period for registering a desire to be notified would unnecessarily limit the time for co-owners to state their desire to be notified. At any time, co-owners may request to be notified in writing in the event any request to purchase is submitted for the property. Additionally, requiring notification to co-owners by mail of an open period for registering their desire to be notified of a purchase at probate offer would make the process less, rather than more, efficient.

2. Elimination of Purchase at Probate of Minerals-Only Interests

Allotments contain both surface interests and minerals interests. In some circumstances, the surface interests and minerals interests have been severed from each other. As a result, a decedent's estate may contain real property interests that are referred to as "minerals-only" interests. Purchasers sometimes seek to purchase those minerals-only interests from the estate. The current probate regulations state that fair market value will be determined by an appraisal or valuation method developed by the Secretary. *See* § 30.264. The Department is able to provide the fair market value of a real property interest only via an appraisal. The Department is unable to perform appraisals for minerals-only interests at this time.

Comment: Elimination of purchase at probate of mineral interests-only interests is adverse to and limits the rights of Tribes. Consult with Tribes and explain why valuation does not provide fair market value of minerals-only interest and why the "OVS valuation" cannot be

the basis for an appraisal. Instead of eliminating purchase at probate, regulations could address whatever issues may have been identified with the OVS-DME valuations.

Response: There is no statutory requirement for approval of a purchase at probate or providing anyone with a right to purchase at probate; rather, a judge decides in any given case whether to allow a purchase at probate. In cases where a judge decides to allow a purchase at probate, the statute requires that the judge ensure the purchase is for at least fair market value. In cases in which the mineral and surface estates are not separated, appraisals of the combined surface and mineral estate are relied upon for fair market value. In cases where there is no surface estate, the “OVS valuations” do not reflect the fair market value of the real property. Those valuations nearly always estimate the minerals-only interests at zero dollars; therefore, the proposed rule would provide that no interest of a minerals-only property may be purchased at probate on the basis of the value of the minerals themselves. The proposed rule does not entirely foreclose the opportunity to purchase a minerals-only interest at probate, however. The proposed rule would provide that purchase of a minerals-only real property interest may be considered for purchase at probate if sufficient evidence of the fair market value of the real property interest (rather than the value of the minerals themselves) is submitted.

C. Issue 3: Notice to Co-Owners who are Potential Heirs

The current regulations require OHA to provide all interested parties—including co-owners, when they are potential heirs—with mailed notice of probate proceedings. *See* § 30.114. Co-owners may be potential heirs in one circumstance: if a decedent dies without any eligible person heirs as listed in AIPRA’s order of succession, and there is no Tribe with jurisdiction over the allotment, then a surviving co-owner of a trust or restricted interest in the allotment may potentially be an “heir” of last resort. The ANPRM suggested revising the regulations to state that potential heirs who may inherit solely based on their status as co-owners will not receive mailed notice of a probate proceeding, unless they have previously filed a request for notice with

BIA or OHA. This proposed rule includes that provision at § 30.114 and provides that public notice will continue to be posted.

Comment: Owners are entitled to due process in the form of notice sent by first class mail, but the ANPRM would instead require potential heirs to notify BIA of their wish to be notified when they become a potential heir.

Response: This comment suggests a concern that a co-owner may be deprived of an opportunity to testify at hearing about his/her right to receive a share of the decedent's estate if the co-owner does not receive notice of the hearing by mail. Co-owners are only potential heirs in the circumstance in which there are no eligible family heirs and no Tribe with jurisdiction. Co-owners rarely know the decedent or decedent's family and therefore rarely have information to assist the judge with the determination of heirs. The only relevant testimony of most co-owners would involve the legal question as to whether a Tribe has jurisdiction over property. If a co-owner has the resources to develop and present a legal argument as to whether a Tribe has jurisdiction over a property, it should not be a burden on that co-owner to take the step of notifying the BIA of a desire to be notified by mail of probates involving the property. Additionally, the proposed rule provides that notice will be posted on OHA's website, and still provides for physical posting of notice of a probate hearing, unless physical posting was not possible due to one of the listed circumstances.

Comment: The proposed change could result in unconstitutional takings and extinguishes the fiduciary responsibility of the Department to co-owners.

Response: Providing notice of a probate hearing through posting in lieu of mailing does not result in any takings because the co-owner is not at risk of losing any property interest. While the co-owner has an ownership interest in the allotment, the co-owner does not own the specific fractional property interest being probated. If the co-owner will be inheriting a share of that property interest (as the only eligible heir because there are no other heirs and there is not a Tribe with jurisdiction over the allotment), then the co-owner will receive the interest through the

inheritance. A co-owner may have the option to purchase the interest—something co-owners are free to pursue at any time outside of the probate context—or the fractional interest the co-owner already owns may slightly increase. There are limited situations in which co-owners may be considered potential heirs at the start of a case, but the property interest being probated ends up being distributed to another person or entity. For example, a will may be submitted at the hearing, a person may credibly claim to be the decedent’s child and heir, or the judge may rule that a Tribe does in fact have jurisdiction over an off-reservation allotment. In those situations, the judge retains the discretion, on a case-by-case basis, to mail notices and decisions to all affected co-owners. For these reasons, the proposed rule continues to take the approach of notifying most co-owners by posting, rather than mail. (For other changes to posting in general, please see Section IV.A. “Summary of Proposed Changes” below). If concerns remain about notice to co-owners, the Department requests additional information to identify the concern underlying this comment, given that the co-owner will not be losing any rights.

D. Issue 4: Insufficient Trust Funds for Funeral Services

The current regulations allow whoever is responsible for making the funeral arrangements on behalf of the decedent’s family to obtain up to \$1,000 from the decedent’s Individual Indian Money (IIM) account to pay for funeral services. *See* 25 CFR 15.301. Due to the passage of time, this amount has proven to be insufficient. In addition, the current regulations require a balance of at least \$2,500 in the decedent’s IIM account at the date of death in order for individuals to request the \$1,000 distribution. The Department sought, but did not receive, comments on this ANPRM issue. The proposed rule would allow individuals to request up to \$5,000 from the decedent’s IIM account to pay for funeral services and would eliminate the requirement for the IIM account to have a specific balance as of the date of death. This change would recognize the increase in the cost of funeral services since the \$1,000 limit was put in place, and would help to ensure that family members are able to pay such costs immediately.

E. Issue 5: No Regulatory Process for Exercise of “Tribal Purchase” Option

The ANPRM highlighted that there are currently no regulatory provisions implementing the AIPRA authority for a Tribe with jurisdiction to purchase an interest in trust or restricted land if the owner of the interest devises it to a non-Indian. *See* 25 U.S.C. 2205(c)(1)(A). The Department did not receive any comments on this section, and is not addressing it in this proposed rule, but plans to consider addressing it in a future rulemaking.

F. Issue 6: Minor Estate Inventory Corrections

At times, BIA determines after a probate decision has been issued that trust or restricted property belonging to a decedent was either omitted from, or incorrectly included in, the inventory of an estate. Under the current regulations, such circumstances require multiple orders, including a modification order, from a judge. The current regulations also require that the modification order be appealable to the Interior Board of Indian Appeals (IBIA). As a result, it can take significant time to make minor estate inventory corrections to include omitted property.

The ANPRM suggested certain revisions to improve probate process efficiency and reduce the amount of time for corrections of estate inventories, by authorizing BIA to make minor estate inventory corrections or to streamline the process that OHA follows before issuing an inventory modification order. One such streamlining measure could involve an heir or devisee being allowed to—prior to the exercise of an IBIA appeal option—request that an OHA judge reconsider a modification order, thus reducing the number of cases that might result in such an IBIA appeal.

Comment: Do not allow BIA to make inventory corrections because the current regulations protect rights that were adjudicated through the original probate and the finality of a probate decision provides clarity and certainty. This change could result in a significant increase of OHA caseload as eligible parties appeal erroneous or conflicted decisions. It would be impossible to ensure equal standing for co-owners seeking redress from unilateral modifications. Also, “minor” and “corrections” are undefined, and any corrections must be treated as a rehearing or reopening subject to advance notice to existing co-owners, and no administrative

action (e.g., distributing revenue to prospective new co-owner) should be imposed by the agency pending final appeal decision..

Response: The proposed rule addresses the concerns expressed in the comments about BIA making inventory corrections by allowing BIA to petition OHA for a distribution order, but leaving the decision as to whether and how changes to an estate inventory affect distribution to the judge. The proposed rule would add a new section that specifically addresses typographical and other non-substantive errors for correction by OHA. *See* proposed § 30.250. Proposed revisions also address how OHA may direct distribution of property that BIA identifies as belonging to an estate after a probate decision is issued, and how OHA may address property that BIA identifies as having been incorrectly included in an estate. Anyone who is adversely affected may challenge the OHA distribution order by filing an appeal through a reconsideration process, which is designed to be more expeditious than an appeal to IBIA. *See* proposed §§ 30.251-30.253.

G. Issue 7: Judicial Authority

The ANPRM suggested adding provisions to the regulations to explicitly allow the OHA judge to order both medical records and vital records from State and local entities as needed, and to issue interrogatories in cases involving will contests.

Comment: Judges should be provided additional discovery powers to obtain basic facts about the cases.

Response: The Department has determined that a more comprehensive overhaul of judicial authority is required, and will consider addressing these issues in a future rulemaking.

H. Issue 8: Indian Status Determinations

Under current probate regulations, a probate decision must determine the Indian status of every heir or devisee. But a determination of Indian status is often not necessary for a probate decision to be made. The ANPRM would require the probate decisions to determine the Indian status of an heir or devisee only when such a determination is necessary; for example, the

determination of Indian status may be necessary in AIPRA cases involving a will and where the devisee is not a lineal descendant of the decedent.

Comment: Require an Indian status determination only for those individuals who stand to inherit as an heir or devisee.

Response: The proposed rule would limit determinations of Indian status to those situations where such determinations are necessary for a probate decision to be made.

I. Issue 9: Increase Opportunities to Use “Renunciation” to Maintain Trust Status of Property

The current regulations allow an heir or devisee to renounce an inherited or devised interest in trust or restricted property, but provide that the renunciation must take place before the probate decision is made. (See 43 CFR part 30, subpart H). Once a probate decision is made, renunciation is not allowed. The current regulations allow petitions for rehearing to be filed within 30 days of a probate decision being made but fail to list renunciation among the bases for which an OHA judge may grant a rehearing. The ANPRM noted that, where renunciations are available at later stages, such as during a rehearing, then individuals could renounce to prevent property from going out of trust. The Department did not receive any comments on this issue. The proposed rule revises the renunciation provisions to allow for renunciations at three additional times after the issuance of a probate decision: within 30 days from the mailing date of the decision; before the entry of an order on rehearing, if a petition for rehearing is pending; or within 30 days of the mailing date of the distribution order that provides the heir or devisee with additional property.

J. Issue 10: Presumption of Death

The probate process authorizes OHA—in some circumstances—to determine whether a person is deceased. Proof of death is not always available. To facilitate the decision-making process, the current regulations allow OHA to apply a presumption of death. The current rule is that such a presumption may be made if there has been no contact with the absent person for the

last six years, dating back from the time of the *hearing*. The hearing does not always occur until well after a probate file is sent by BIA to OHA, so the ANPRM suggested revising the provisions in 43 CFR 30.124(b)(2), keeping the six-year rule but having it date back from the last date of known contact with the absent person. As needed for practicality, these revisions could include exceptions and/or rules about what “known contact” entails and/or how “known contact” is shown.

Comment: Exclude word-of-mouth and social media postings from acceptable forms of contact, and limit to tamper-proof forms of written or timestamped recorded media that conform to requirement for “clear and convincing evidence” found at 43 CFR 30.124.

Response: The proposed rule does not exclude word-of-mouth and social media postings or otherwise limit what evidence of contact can be presented because it is the judge’s role to weigh the evidence and determine its credibility, as the judge would with any other evidence. The proposed rule lists specific evidence that will allow a judge to presume that a missing person has died and presume the date of death, including specific evidence showing that the person has been absent for at least 6 years. The proposed rule also specifies that the presumption may be rebutted by evidence that establishes that the person is still alive or explains the individual's absence in a manner consistent with continued life rather than death.

K. Issue 11: Reopening Closed Probate Cases

In separate areas of the current regulations, a party may file a petition for rehearing or a petition for reopening (*see* 43 CFR 30.240 and 30.125). A petition for rehearing must be filed within 30 days of the probate decision and the requirements for presenting new evidence are specifically laid out. Petitions for reopening may be filed much later with few limitations on the reasons for a reopening. The ANPRM suggested revising the current regulations to: 1) limit the ability of a party who did not use the opportunity to participate in an initial probate proceeding to later file a petition for reopening; and 2) in both rehearing and reopening proceedings, make clear the circumstances under which new evidence may be presented.

Comment: Limit the number of times an interested party or BIA may petition for reopening.

Response: The proposed rule includes limits on re-petitioning to ensure finality of probate proceedings.

Comment: Reject limitations on petitions to reopen because individuals fail to participate in probates for legitimate reasons. Probate judges already have discretion to deny petitions to reopen where they see fit.

Response: It is true that probate judges already have discretion to deny petitions to reopen where they see fit, but probate judges will usually deny petitions to reopen where an individual had the opportunity to participate in an initial probate proceeding and failed to avail himself or herself of that opportunity. If the individual received notice of the opportunity to participate in the probate proceeding, it is incumbent upon that individual to participate in the proceeding, notify OHA, or seek a rehearing within 30 days. If, as the commenter notes, the individual had a “legitimate reason” for not participating, the individual should contact the court at that time or seek a rehearing within 30 days, rather than wait until after the probate decision has become final. At some point, there needs to be finality in each probate proceeding, and subjecting probate proceedings to being reopened undermines that finality. As such, reopening should be reserved for only the most necessary of circumstances.

Comment: The rules are clear enough, but the agency manipulates or ignores the rules; clarify that the Department may not act on its own volition.

Response: The rules are intended to establish consistency and predictability, but judges have the flexibility to make judgments within the framework of the rules.

L. Issue 12: Streamlining Process for Small Estates

Current regulations require estates with trust property or trust funds in excess of \$5,000 to be adjudicated by an OHA decision maker through the formal probate process involving a

hearing: a process that can be perceived as disproportionately time consuming for small estates. Current regulations also establish a summary probate process – which allows for disposition of the estate without a formal hearing, by a judge or ADM, based on the probate file alone – if the estate involves only cash of \$5,000 or less on the date of death. The ANPRM suggested increasing the scope of estates that are subject to OHA’s summary process, which does not require a formal hearing (*see* 43 CFR part 30, subpart I), and/or determine what would be considered a small estate and, for estates within that definition, create a streamlined distribution scheme for such estates.

Comment: Reject the change because eliminating hearings for simple estates would undermine due process.

Response: Eliminating hearings for small estates that include only minimal funds and no land or trust personalty promotes due process by allowing faster resolution of pending probate cases. However, in recognition of this commenter’s concern regarding limiting hearings, the proposed rule takes a different approach from that suggested in the ANPRM. Rather than increasing the scope of estates subject to summary probate proceedings as suggested in the ANPRM, the proposed rule limits the estates that are subject to summary probate proceedings by lowering the dollar threshold (from \$5,000 to \$300), while further streamlining the summary probate process to allow estates to be handled more efficiently in the summary probate process. Like the current regulations, the proposed summary probate process allows for disposition of an estate by a judge or ADM based on the probate file, without a hearing. The proposal further streamlines the process by obviating the need for notice prior to issuance of the probate decision through elimination of the option to convert the proceedings to formal probate proceedings, elimination of consideration of claims against the estate, and extending the deadline for renouncing to 30 days after the mailing of the probate decision. The probate decision under the proposed rule would then not only set out and explain the distribution, but provide instructions on how to renounce or seek review of the decision. This proposal also promotes due process by

providing the opportunity for anyone adversely affected by the decision in a summary to file a request for review, but streamlines the process by allowing for reconsideration rather than de novo review.

Comment: Develop, in consultation with Tribes, a separate process for “micro estates” where value to be distributed is \$100 or less, so value can be distributed in less than 60 days. Where multiple heirs, allow heirs to relinquish their interests with a one-page notarized attestation.

Response: The proposed rule revises summary probate proceeding provisions to establish an expedited process for small estates consisting only of funds of \$300 or less. This threshold amount was identified as a natural dividing point based on data reflecting the amounts of probate estates.

Comment: Object to change based on sense of equal treatment. If changes are made, at a minimum, co-owners and potential heirs should be granted sufficient notice that this provision may be invoked only with an opportunity to object.

Response: As proposed, all interested parties will receive notice of the decision and anyone adversely affected will have the opportunity to seek review.

M. Issue 13: Descent of Off-Reservation Lands

The ANPRM noted that the current regulations do not address the provision of AIPRA regarding descent of interests in trust or restricted lands that are located outside the boundaries of an Indian reservation and are not subject to the jurisdiction of a Tribe. *See* 25 U.S.C. 2206(d)(2). The Department received no comments on this provision and will consider addressing this issue in a future rulemaking.

IV. Overview of Proposed Rule

The Department is proposing revisions to existing regulations that are unclear and/or create uncertainty and may lengthen the time it takes to process probates. The proposed rule aims

to streamline probate processes, while providing due process, so that probate cases may be closed and distribution to heirs and devisees may occur more quickly. Closing the probate case sooner allows for distribution of property more quickly and creates certainty in the determination of the heirs and devisees. Each open probate case has the potential to create ripple effects of uncertainty as heirs and devisees become decedents themselves. The Department recognizes both the financial and emotional toll open probate cases take on families and, with this proposed rule, aims to provide certainty for families and future generations more expeditiously.

A. Summary of Proposed Changes

One way in which the proposed rule would accomplish the goal of streamlining the probate process is by overhauling the process and criteria for summary probate proceedings, to establish a process for very small estates: estates that contain no interests in trust or restricted land and that include only funds (no other trust personalty) of \$300 or less. The expedited process for these small estates will allow OHA to adjudicate the cases based on the probate file alone, while allowing anyone adversely affected by the decision a limited time to seek review.

Other revisions that will help to expedite resolution of probate cases include:

- A revision so that the judge does not need to determine the status of eligible heirs or devisees as Indian in every probate case, but only those in which that information is necessary;
- A revision to eliminate the need to provide mailed notice to co-owners who would inherit only because of their status as co-owners if there were no eligible family heirs and no Tribe with jurisdiction;
- A new provision allowing OHA to issue a correction order to correct non-substantive and typographical errors without reopening the probate case;
- Revised processes for when it is discovered after issuance of a decision in a probate case that additional property must be added to an estate inventory or that property was

incorrectly included in the estate inventory, including a process for challenging these types of decisions through reconsideration rather than appeal to the IBIA;

- Revisions to allow heirs and devisees to renounce their interests at hearings (having their written declarations acknowledged before a judge) and allowing them to renounce not just prior to issuance of the probate decision, but also within 30 days of the decision, upon rehearing, or when additional property is added to the decedent's estate.

The proposed rule also includes revisions to provide that, in addition to mailing notice to heirs and devisees and others listed in § 30.114, OHA will post notice of formal probate proceedings on its website and physically post notice (unless physical posting is not possible due to one of the listed circumstances). It also proposes to eliminate physical posting for a hearing that will not be held in person and proposes to provide better targeted locations for physical posting.

The current rule requires posting at the agency with jurisdiction over the trust or restricted parcels in the estate and at five or more conspicuous places in the vicinity of the designated place of hearing (which is generally located in the area of the identified heirs or devisees). The proposed rule would require OHA to post on its website, allowing notice to be available to all. These changes would accommodate the increased use of telephonic and other alternatives to in-person hearings, which are occurring and are anticipated to continue to occur as a result of technological advances. Posting notice on OHA's website also establishes one location that is available for anyone to access regardless of residency. The proposed rule retains provisions for some physical postings in addition to mailed notice and the website posting. Specifically, the proposed rule allows for physical posting at the home agency and at the agency with jurisdiction over the trust or restricted parcels in the estate, if different from the home agency, but reduces from five to one the number of conspicuous places in the vicinity of the hearing that notice must be physically posted. The proposed rule further clarifies that if there is not an in-person hearing, then the posting in the conspicuous place in the vicinity of the hearing

is not required. The proposed rule would also establish that OHA may proceed with a hearing even if physical posting was not possible due to one of the listed circumstances. The Department specifically invites comment on these changes, including:

- Whether physical posting is effective in actually providing notice to potential parties who do not receive mailed notice;
- Whether locations for posting other than the ones presented in the proposed rule would be more effective;
- Whether posting would be more effective using any method(s) other than, or in addition to, those presented in the proposed rule;
- Whether there should be physical postings in more than one conspicuous place in the vicinity of in-person hearings (and if so, how many); and
- Whether OHA should proceed with scheduling a hearing when it is only able to mail notices and post notices on its website, but the physical posting of additional notices is “not possible” (i.e., the agency office is closed or inaccessible or extenuating circumstances exist preventing personnel from physically posting) and whether the definition of “extenuating circumstances” is appropriate.

The proposed rule would also clarify terminology and state what happens when various eventualities arise, which will help judges decisively address the issues and provide clarity for heirs and devisees throughout the process. For example, the proposed rule would delineate:

- That there is one probate “decision,” which results from the summary probate proceeding or formal probate proceeding, and all other written rulings issued by judges are “orders,” such as an order on rehearing, an order on reopening, or a distribution order;
- The evidence a judge may rely on to presume that an individual has died and their date of death;
- How a judge will partition an allotment when a will attempts to divide an allotment into two or more distinct portions and devises at least one of those portions;

- Who receives personal, mailed notice of a formal probate proceeding and how public notice is posted;
- Rehearing and reopening processes and how they relate to each other;
- The meanings of joint tenancy and tenants-in-common and how the presumption of joint tenancy and the anti-lapse provision each operate in the determination of heirs and devisees;
- How trust personalty will be distributed when there are no eligible family heirs, and when there are either no land interests in the decedent's estate or there are land interests within the jurisdiction of more than one Tribe.

As mentioned in the prior section, the proposed rule would also overhaul the purchase at probate process. The current purchase at probate provisions are unwieldy in their fit with the formal probate proceedings and result in probate cases being kept open indefinitely while the purchase at probate process, including appraisals/valuations, continues. Additionally, because the current provisions require the purchase at probate to be completed before the probate decision is issued, purchases at probate are completed based on provisional heirs and devisees, which causes uncertainty and increases the chance of having to redo the already-lengthy process. The proposed rule would instead sequence the purchase at probate process to allow the probate to be closed, while the purchase at probate continues, as follows:

- The eligible purchaser may request to purchase at any time before the completion of the first probate hearing (including at the hearing) or within 30 days of the distribution order mailing date, when requesting to purchase property newly added to the inventory.
- If the request is still pending at the time the probate decision is issued and is not denied in the decision, OHA then includes in the probate decision (or reconsideration order if property was added) a list of all the purchase at probate requests that have been submitted, direction to BIA to obtain an appraisal/valuation of the interest, and direction to heirs or devisees on how to consent if they wish to do so. The property is distributed

and any property subject to the purchase at probate request is conveyed with an encumbrance.

- If consent is needed for the purchase, BIA holds off on ordering the appraisal/valuation until at least one heir or devisee has filed the written notification that the heir or devisee would consider selling the interest.
- BIA obtains the appraisal/valuation.
- BIA files a Petition to Complete Purchase at Probate, and OHA issues an Order to Submit Bids to all potential bidders that includes the fair market value.
- Anyone who may be affected by the determination of the fair market value may object to the fair market value stated in the Order to Submit Bids by filing a written objection with OHA within 45 days.
- OHA determines whether the bid is successful based on whether the bid was timely, equal to or greater than the fair market value, and, when consent is required for the purchase, the applicable heir, devisee, or surviving spouse accepts the bid.
- OHA notifies parties of the successful bid.
- The successful bidder pays for the interest purchased and the interest transfers.
- Any interested party who is adversely affected by the judge’s order to approve or disapprove the purchase at probate may appeal to the IBIA within 30 days of the order.

B. Crosswalk of Current Regulation to Proposed Regulation

The following chart provides a high-level crosswalk of the current regulatory provisions as compared to the proposed provisions. Sections not listed in the “current” column are unaffected by this proposed rule.

In 25 CFR part 15:

| Current § | Proposed § | Summary of Proposed Changes |
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| 15.202 What items must the agency include in the probate file? | 15.202 What items must the agency include in the probate file? | Redesignates paragraphs and adds a new paragraph (b) to establish a more limited universe of documents required to be included in estates that will be subject to a summary probate proceeding (i.e., estates with no land and \$300 or less in funds). Also adds a new paragraph (a)(16) to address the need for the probate file to include valuation reports in the limited circumstances in which a special statute applies that requires the valuation report. |
| 15.301 May I receive funds from the decedent's IIM account for funeral services? | 15.301 May I receive funds from the decedent's IIM account for funeral services? | Increases the amount that may be requested and approved for distribution from a decedent's IIM account to pay for funeral expenses from \$1,000 to \$5,000. Also deletes requirement for the IIM account to contain at least \$2,500 and clarifies that funds, if approved, are taken from the balance of the account as of the date of death. |
| N/A | 15.404 What happens if BIA identifies additional property of a decedent after the probate decision is issued? | New section. |
| N/A | 15.405 What happens if BIA identifies that property was incorrectly included in a decedent's inventory? | New section. |

In 43 CFR part 30:

| Current § | Proposed § | Summary of Proposed Changes |
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| 30.100 How do I use this part? | 30.100 How do I use this part? | Updates citations (no substantive change). |

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| <p>30.101 What definitions do I need to know?</p> | <p>30.101 What definitions do I need to know?</p> | <p>Deletes definitions of “BLM” and “de novo review” because they are no longer used.</p> <p>Revises the definitions of “ADM” to delete reference to de novo review, “decision” to clarify that there is a single probate decision, “Indian probate Judge” to reflect that the judges exercise delegated authority, “Interested party” to exclude those who may inherit solely as a co-owner, and “summary probate proceeding” to reflect the new approach to these proceedings.</p> <p>Adds definitions for “distribution order,” “extenuating circumstances,” “home agency,” “joint tenancy,” “lineal descendant,” “order,” “Petition to Complete Purchase at Probate,” and “tenants in common.”</p> |
| <p>30.114 Will I receive notice of the probate proceeding?</p> | <p>30.114 Will I receive notice of the probate proceeding?</p> | <p>Deletes provisions in current paragraph (b) regarding requesting a formal probate proceeding in lieu of a summary probate proceeding because, with the proposed revisions to the summary probate proceeding elsewhere in the proposed rule, this provision is no longer applicable.</p> <p>Revises paragraph (b) to provide that potential heirs who may inherit solely as co-owners of an allotment will not receive actual notice unless they have previously filed a request for notice with BIA or OHA.</p> |
| <p>30.123 Will the judge determine matters of status and nationality?</p> | <p>30.123 Will the judge determine matters of status and nationality?</p> | <p>Adds “if relevant” so that a judge is not required to determine the status of eligible heirs or devisees as Indian if their status is not relevant in the probate case.</p> |
| <p>30.124 When may a judge make a finding of death?</p> | <p>30.124 When may a judge make a finding of death?</p> | <p>Revises to list specific evidence that will support a presumption that an heir, devisee, or person for whom a probate case has been opened has died and the date of death. Also establishes what evidence will rebut the presumption.</p> |
| <p>30.125 May a judge reopen a probate case to correct errors and omissions?</p> | <p>30.129 May a judge reopen a probate case to correct errors and omissions?</p> | <p>Redesignated to follow other section on correcting errors in “Judicial Authority” subpart. No substantive change.</p> |

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| N/A | 30.125 May a judge order that a property interest be partitioned as a result of a devise? | New section. |
| N/A | 30.250 May a correction order be issued to correct typographical and other non-substantive errors? | New section. |
| 30.126 What happens if property was omitted from the inventory of the estate? | 30.251 What happens if BIA identifies additional property of a decedent after a decision is issued? | Clarifies what information BIA must provide to OHA in support of the petition to add the property, and provides that the judge will issue a distribution order of the additional property. |
| 30.127 What happens if property was improperly included in the inventory? | 30.252 What happens if BIA identifies that property was incorrectly included in a decedent's inventory? | Clarifies what information BIA must provide to OHA in support of the petition to remove the property, and provides that the judge will issue a distribution order that addresses any modifications to the distribution of the decedent's property resulting from the correction of the inventory. |
| N/A | 30.253 What happens if a request for reconsideration of a distribution order is timely made? | New section. Adds a process to allow interested parties to seek reconsideration of the distribution order. |

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| Subpart G – Purchase at Probate | Subpart M – Purchase at Probate | Revises this subpart overall to streamline the process for purchasing decedent’s interests at probate using the statutory authority in the American Indian Probate Reform Act. |
| 30.160 What may be purchased at probate? | 30.400 What may be purchased at probate? | <p>Adds a provision regarding purchase of minerals-only interests at probate.</p> <p>Deletes provision regarding timing of requesting a purchase at probate (addressed in proposed § 30.404).</p> |
| 30.161 Who may purchase at probate? | 30.401 Who may purchase at probate? | No substantive change. |
| 30.162 Does property purchased at probate remain in trust or restricted status? | 30.402 Does property purchased at probate remain in trust or restricted status? | No change. |
| 30.163 Is consent required for a purchase at probate? | 30.403 Is consent required for a purchase at probate? | <p>Adds that, to purchase any interest included in an approved consolidation agreement, the consent of the recipient of the consolidated interest is required.</p> <p>Adds a new paragraph (b) establishing procedures for heirs and devisees to refuse consent to a purchase at probate.</p> <p>Adds to the conditions in which a Tribe does not need consent to purchase that the interest is not part of an approved consolidation agreement.</p> |
| 30.164 What must I do to purchase at probate? | <p>30.404 How do I initiate a purchase at probate?</p> <p>30.405 When may I initiate a purchase at probate?</p> | Changes the deadline for filing a purchase request from before issuance of the final probate decision or order to instead before the end of the first probate hearing. |
| N/A | 30.406 May I withdraw my | New section. |

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| | request to purchase at probate? | |
| N/A | 30.407 How will OHA address requests to purchase at probate? | New section. |
| 30.165 Who will OHA notify of a request to purchase at probate? 30.166 What will the notice of the request to purchase at probate include? | 30.408 What will OHA include in the probate decision or reconsideration order when a purchase at probate is pending? | Revisions to incorporate the purchase at probate process into the final probate decision or reconsideration order, since that final decision and order are provided to the heirs or devisees, BIA, and anyone who has submitted a request to purchase. |
| N/A | 30.409 How will a pending purchase at probate request affect how the decedent's property is distributed? | New section. |
| N/A | 30.410 How will the purchase at probate process continue after the decision or reconsideration order is issued? | New section. |
| 30.167 How does OHA decide whether to approve a | 30.411 How will the interests to be purchased at | Adds that BIA will obtain the appraisal or other fair market valuation and that any appraisal/valuation must be made on the basis of the fair market value as of the decedent's date of death. |

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| <p>purchase at probate?</p> | <p>probate be valued?</p> <p>30.416 How does OHA decide whether a bid is successful?</p> | <p>Adds that the appraisal/valuation must state or include a certification that it is assessing the fair market value of the real property interest.</p> <p>Clarifies that OHA may hold a hearing and that the applicable heir, devisee, or surviving spouse may choose which bid to accept if multiple bids are submitted.</p> |
| <p>30.168 How will the judge allocate the proceeds from a sale?</p> | <p>(see 30.419, listed below)</p> | <p>Combines information on allocating proceeds with information on OHA issuing the order approving the sale.</p> |
| <p>30.169 What may I do if I do not agree with the appraised market value?</p> | <p>30.415 What may I do if I do not agree with the determination of fair market value in the Order to Submit Bids?</p> | <p>Expands who may object to a fair market value determination to include any party who may be affected by the determination.</p> <p>Combines time for filing an objection (30 days) and filing supporting documentation (15 days) into a deadline of 45 days for both.</p> <p>Requires objecting party to provide copies of the objection and supporting documents to parties who have an interest in the purchase of the property.</p> <p>Provides that the judge may issue a Modified Order to Submit Bids.</p> |
| <p>30.170 What may I do if I disagree with the judge's determination to approve a purchase at probate?</p> | <p>30.423 What may I do if I disagree with the judge's determination to approve or deny a purchase at probate.</p> | <p>Replaces process for objecting to the judge with a process for appealing to IBIA.</p> |
| <p>30.171 What happens when the judge grants a request to purchase at probate?</p> | <p>30.412 What will OHA do when it receives BIA's notification that an appraisal/valuat</p> | <p>Clarifies that OHA issues an Order to Submit Bids to all potential bidders, and that this occurs after the fair market value has been determined.</p> |

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| | <p>ion has been completed?</p> <p>30.417 How does the judge notify the parties whether there was a successful bid?</p> | |
| N/A | 30.413 Who are potential bidders? | New section. |
| N/A | 30.414 What will be contained in the Order to Submit Bids? | New section. |
| 30.172 When must the successful bidder pay for the interest purchased? | 30.418 When must the successful bidder pay for the interest purchased? | No substantive change. |
| 30.173 What happens after the successful bidder submits payment? | 30.419 What happens after the successful bidder submits payment? | Adds information on allocation of the proceeds of the sale. |
| 30.174 What happens if the successful bidder does not pay within 30 days? | 30.420 What happens if the successful bidder does not pay within 30 days? | No substantive change. |
| 30.175 When does a purchased interest vest in the purchaser? | 30.421 When does a purchased interest vest in the purchaser? | No substantive change. |
| N/A | 30.422 What will happen to | New section. |

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| | any lease income received or accrued from purchased land interests before the purchased interest vests in the purchaser? | |
| N/A | 30.424 When will the order approving or denying the purchase at probate become final? | New section. |
| Subpart H – Renunciation of Interest | Subpart H – Renunciation of Interest | See below for specific sections. |
| 30.180 May I give up an inherited interest in trust or restricted property or trust personalty? | 30.180 May I give up an inherited interest in trust or restricted property or trust personalty? | No change. |
| 30.181 How do I renounce an inherited interest? | 30.181 When may I renounce a devised or inherited interest? 30.186 How do I renounce an inherited interest? 30.188 What steps will the judge take if I | Splits into two sections. Expands when someone may renounce to allow renunciation 30 days after the probate decision is mailed, before the entry of an order on rehearing, or within 30 days after mailing of the distribution for additional property. Expands the manner in which someone may renounce to allow acknowledgment before either a notary or a judge, so that someone may renounce in person at a hearing. |

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| | designate a recipient? | |
| N/A | 30.182 Who may renounce an inherited interest on behalf of an heir or devisee who dies before the hearing? | New section. Specifies who may renounce on behalf of an heir or devisee who dies before the hearing. |
| 30.182 Who may receive a renounced interest in trust or restricted land? 30.183 Who may receive a renounced interest of less than 5 percent in trust or restricted land? | 30.183 Who may receive a renounced interest in trust or restricted land if the land will pass pursuant to a valid will? 30.184 Who will receive a renounced interest in trust or restricted land if the land will pass by intestate succession? | Reorganizes these sections to distinguish based on whether the decedent had a will or not. No substantive change. |
| 30.184 Who may receive a renounced interest in trust personalty? | 30.185 Who may receive a renounced interest in trust personalty? | Deletes paragraph (c) of the current section, which says the following, because it is not directly relevant to the probate process: “The Secretary will directly disburse and distribute trust personalty transferred by renunciation to a person or entity other than those listed in paragraph (b) of this section.” |
| 30.185 May my designated recipient refuse to accept the interest? | 30.189 May my designated recipient refuse to accept the interest? | Adds a provision allowing the designated recipient the opportunity to refuse the interest. |

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| <p>30.186 Are renunciations that predate the American Indian Probate Reform Act of 2004 valid?</p> | <p>30.190 Are renunciations that predate the American Indian Probate Reform Act of 2004 valid?</p> | <p>No change.</p> |
| <p>30.187 May I revoke my renunciation?</p> | <p>30.191 May I revoke my renunciation?</p> | <p>Revised when a written renunciation becomes irrevocable to when the applicable order distributing the property becomes final, rather than when the judge enters the final order in the probate proceeding.</p> |
| <p>30.188 Does a renounced interest vest in the person who renounced it?</p> | <p>30.187 What happens if I do not designate any eligible individual or entity to receive the renounced interest?</p> <p>30.192 Does a renounced interest vest in the person who renounced it?</p> | <p>Reorganizes to split into two sections. No substantive change.</p> |
| <p>Subpart I – Summary Probate Proceedings</p> | <p>Subpart I – Summary Probate Proceedings</p> | <p>See specific sections below.</p> |
| <p>30.200 What is a summary probate proceeding?</p> | <p>30.200 What is a summary probate proceeding?</p> | <p>Deletes that the supervising judge may determine whether the proceeding is conducted by a judge or ADM because this is an internal procedure.</p> <p>Changes the qualification for summary probate proceedings from funds-only estates with a value of \$5,000 or less to funds-only estates with a value of \$300 or less.</p> <p>Specifies what funds are considered in determining the value of the estate.</p> |
| <p>30.201 What does a notice of a summary probate</p> | <p>30.206 What notice of the summary</p> | <p>Changes the notice provided to be notice of the summary probate decision and right to challenge the decision because the proposed rule eliminates the option for a</p> |

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| proceeding contain? | probate decision will the judge or ADM provide? | hearing and claims renunciations from the summary probate proceeding. Deletes reference to renunciations because the option to renounce will now occur after the summary probate decision is issued. |
| 30.202 May I file a claim or renounce or disclaim an interest in the estate in a summary probate proceeding? | 30.201 May I file a claim in a summary probate proceeding? | Revises to disallow claims in summary probate proceedings because the estate value is only \$300 or less. |
| N/A | 30.202 What will happen when OHA receives the summary probate file? | New section. Provides that OHA determines the distribution of estates under summary probate proceedings based on the information included in the probate file. |
| N/A | 30.203 What will happen if the funds in the estate are insufficient to provide each heir or devisee at least one cent? | New section. Clarifies that if the funds in the estate are insufficient to provide all heirs or devisees with one cent, then the oldest heir or devisee receives all the funds. |
| 30.203 May I request that a formal probate proceeding be conducted instead of a summary probate proceeding? | 30.204 May I request that a formal probate proceeding be conducted instead of a summary probate proceeding? | Revises to eliminate the option for requesting the summary probate be conducted as a formal probate proceeding because the estate value is so small. |
| 30.204 What must a summary probate decision contain? | 30.205 What must a summary probate | Reorganizes. Deletes reference to a proposed decision, because the judge decides the case without first releasing a proposed decision. |

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| | decision contain? | <p>Deletes references to claims.</p> <p>Adds that determination of “Indian” status is necessary only if relevant.</p> <p>Allows renunciation for 30 days after the mailing date of the decision (or within 30 days of an order on review, if applicable).</p> <p>Adds a statement that a formal probate proceeding will be initiated if BIA later identifies trust or restricted land that should have been included in the estate.</p> |
| 30.205 How do I seek review of a summary probate proceeding? | 30.207 How do I seek review of a summary probate proceeding? | <p>Deletes reference to “de novo” review.</p> <p>Clarifies that BIA may also seek review.</p> |
| 30.206 What happens after I file a request for de novo review? | 30.208 What happens after I file a request for review? | <p>Lengthens the time OHA has to notify the agency that prepared the probate file, all other affected agencies, and all interested parties of the request for review from 10 days to 30 days of receipt of the request for review.</p> <p>No longer requires a hearing on review.</p> <p>Clarifies that the judge may issue an order affirming, modifying, or vacating the summary probate decision.</p> <p>Lists who the judge must distribute the final order to and what it must include.</p> <p>Allows appeal to the IBIA.</p> |
| 30.207 What happens if nobody files for de novo review? | 30.209 What will the judge or ADM do with the official record of the summary probate case? | <p>Provides that OHA transmits the official record back to the agency originating the probate and lists what will be included in the record.</p> <p>Deletes provision requiring OHA to send copies to other affected agencies.</p> <p>(Section specifying that the order becomes final after 30 days is in proposed § 30.206(b)).</p> |
| Subpart J – Formal Probate Proceedings | Subpart J – Formal Probate Proceedings | See affected sections below. |

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| <p>30.210 How will I receive personal notice of the formal probate proceeding?</p> | <p>30.210 How will I receive personal notice of the formal probate proceeding?</p> <p>30.211 How will OHA provide public notice of the formal probate proceeding?</p> | <p>Reorganizes to group all mailed (personal) notice into one section and all public notice into a separate section.</p> <p>Clarifies that the will and codicils will be mailed with the notice of the proceeding. (Section 30.114 lists who receives mailed notice of the hearing).</p> <p>Allows the posted notice that supplements the mailed notice to contain information for more than one hearing and specifies the minimum information that must be included for each.</p> <p>Adds requirement for OHA to post notice of all hearings on its website.</p> <p>Adds a provision for physical posting at the decedent’s home agency.</p> <p>Clarifies that a posting in the vicinity of the designated place of hearing will occur only if OHA designates a specific hearing location and reduces the number of conspicuous places for posting from five to one.</p> <p>Adds that OHA may proceed with a hearing without physical posting if physical posting is not possible due to one of the listed circumstances, including when the agency office is closed or inaccessible or extenuating circumstances prevent personnel from posting. (See definition of “extenuating circumstances,” which includes situations such as a natural disaster affecting the agency office or travel to the agency office or other event affecting the agency office’s ability to provide sustained continuous operations and services.)</p> |
| <p>30.211 Will the notice be published in a newspaper?</p> | <p>N/A</p> | <p>Deletes separate provision for publishing in a newspaper to give judge discretion to post notice in places other than the OHA website (including in a newspaper, if appropriate), for the purpose of increasing the chances of reaching individuals or entities with an interest in a probate case.</p> |
| <p>30.238 May I file a petition for rehearing if I disagree with the judge’s decision</p> | <p>30.238 May I file a petition for rehearing if I disagree with the judge’s decision in a</p> | <p>Specifies that you must be an interested party to seek a rehearing and the basis for your request must be to correct a substantive error. Expands on what issues may be raised and what evidence may be relied upon in rehearing.</p> |

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| in a formal probate hearing? | formal probate hearing? | |
| 30.239 Does any distribution of the estate occur while a petition for rehearing is pending? | 30.239 Does any distribution of the estate occur while a petition for rehearing is pending? | No change. |
| 30.240 How will the judge decide a petition for rehearing? | 30.240 How will the judge decide a petition for rehearing? | Clarifies that the judge will consider the petition for rehearing as a petition for reopening if not timely filed. Adds provision allowing the judge to summarily deny the petition based on certain deficiencies. |
| 30.241 May I submit another petition for rehearing? | 30.241 May I submit another petition for rehearing? | No substantive change. Moves information regarding the judge's jurisdiction to § 30.242. |
| 30.242 When does the judge's order on a petition for rehearing become final? | 30.242 When does the judge's order on a petition for rehearing become final? | Includes information on when the jurisdiction of the judge terminates. |
| 30.243 May a closed probate case be reopened? | 30.243 May a closed probate case be reopened? 30.244 When must a petition for reopening be filed? 30.245 What legal standard will be applied to reopen a case? 30.246 What must be included in a | Deletes the chart and states by whom and the circumstances in which a closed probate case may be reopened. Splits provisions regarding deadlines for filing petitions to reopening to proposed § 30.244 to simplify the deadline to one year after discovery of the error. Clarifies that the 3-year threshold is important only with regard to the heightened legal standard that is applied to the petition to reopen after 3 years. Expands on what information must be included in a petition for reopening to justify reopening. |

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| | petition for reopening? | |
| N/A | 20.247 What is not appropriate for a petition for reopening? | New section. Clarifies what issues or objections a petition may not raise and what evidence a petition may not rely upon for a reopening, to encourage parties to address issues and bring evidence during the initial probate proceeding. |
| 30.244 How will the judge decide my petition for reopening? | 30.248 How will the judge decide my petition for reopening? | Adds provision allowing the judge to summarily deny the petition based on certain deficiencies. |
| 30.245 What happens if the judge reopens the case? 30.246 When will the decision on reopening become final? | 30.249 What happens when the judge issues an order on reopening? | Combines two sections. No substantive change. |
| Subpart K - Miscellaneous | Subpart N - Miscellaneous | See affected sections below. |
| 30.250 When does the anti-lapse provision apply? | 30.500 When does the anti-lapse provision apply? | Redesignated. No change. |
| N/A | 30.501 When is joint tenancy presumed? | New section. Establishes that joint tenancy will be presumed where a testator devises the same interests to more than one person without specifying otherwise. |
| N/A | 30.502 How does a judge resolve conflicts between the anti-lapse provision and | New section. Clarifies that the judge will give priority to the presumption of joint tenancy, such that the share of the deceased devisee will go to the surviving devisees (rather than to the deceased devisee's descendants). |

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| | presumption of joint tenancy? | |
| 30.251 What happens if an heir or devisee participates in the killing of the decedent? | 30.503 What happens if an heir or devisee participates in the killing of the decedent? | Redesignated. No change. |
| 30.252 May a judge allow fees for attorneys representing interested parties? | 30.504 May a judge allow fees for attorneys representing interested parties? | Redesignated. No change. |
| 30.253 How must minors or other legal incompetents be represented? | 30.505 How must minors or other legal incompetents be represented? | Redesignated. No change. |
| 30.254 What happens when a person dies without a valid will and has no heirs? | 30.506 When a decedent died intestate without heirs, what law applies to trust or restricted property? | Deletes chart. Reorganizes based on whether the decedent died before or after the date of AIPRA's enactment. Adds detail as to how interests will be distributed under the statute in each case, rather than just citing the statutory provisions. |
| N/A | 30.507 How will trust personalty be distributed if a decedent died intestate on or after June 20, 2006, and the Act does not specify how the | New section. Specifies how trust personalty is distributed in the circumstance in which AIPRA applies but fails to state how trust personalty is distributed: if the decedent has no surviving spouse or eligible heirs or trust or restricted property over which one and only one Tribe has jurisdiction. |

| | | |
|--|---|--|
| | trust personalty should be distributed? | |
|--|---|--|

V. Tribal Consultation and Public Hearing

The Department will be hosting the following Tribal consultation session to discuss this proposed rule:

| Date | Time | Location |
|---------------------------|---------------------------------|---|
| Tuesday, February 9, 2021 | 2 p.m. – 5 p.m. Eastern Time | Call-in number: (800) 369-3356 Passcode: 8182564 |

The Department will also be holding a public hearing for anyone for whom the Department holds property in trust or restricted status or for anyone else interested in this rulemaking, as follows:

| Date | Time | Location |
|-----------------------------|---------------------------------|---|
| Thursday, February 11, 2021 | 2 p.m. – 5 p.m. Eastern Time | Call-in number: (888) 790-3548 Passcode: 6643062 |

Tribal consultation is reserved for officially designated representatives of federally recognized Tribes. Anyone who is not an officially designated representative of a federally recognized Tribe that is interested in this rulemaking should join the public hearing session only.

VI. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this proposed rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs

agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements. This proposed rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations.

B. Reducing Regulations and Controlling Regulatory Costs (E.O. 13771)

E.O. 13771 of January 30, 2017, directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of E.O. 12866. Therefore, E.O. 13771 does not apply to this rule.

C. Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule affects only individuals' estates and does not affect small entities.

D. Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rulemaking under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

(a) Does not have an annual effect on the economy of \$100 million or more because this rule addresses only the transfer through probate of individuals' property held in trust or restricted status.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because this rule affects only probates of individuals' trust or restricted property.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because this rule affects only probates of individuals' trust or restricted property.

E. Unfunded Mandates Reform Act

This proposed rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The proposed rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

F. Takings (E.O. 12630)

This proposed rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rulemaking, if adopted, does not affect individual property rights protected by the Fifth Amendment or involve a compensable "taking." A takings implication assessment is not required.

G. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because the rule affects only the probate of individuals' trust or restricted property. A federalism summary impact statement is not required.

H. Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of Executive Order 12988. Specifically, this proposed rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation with Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has substantial direct effects on federally recognized Indian Tribes because the proposed rule affects the probate of trust or restricted property held by individuals, many or most of whom are likely Tribal members. Information on Tribal consultation is provided in Section IV.

J. Paperwork Reduction Act

This proposed rule does not contain any new collection of information that requires approval from the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection requirements associated with compiling the probate file for an estate and assigned the information collection requirements OMB Control Number 1076-0169 (expires 7/31/2021). We estimate the annual burden associated with this information collection to be 617,486 hours per year. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

K. National Environmental Policy Act

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because these are "regulations... whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case." 43 CFR 46.210(i). We have also determined that the rulemaking does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under

NEPA.

L. Effects on the Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

M. Clarity of this Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- a) Be logically organized;
- b) Use the active voice to address readers directly;
- c) Use clear language rather than jargon;
- d) Be divided into short sections and sentences; and,
- e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

N. Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects

Estates, Indians-law.

43 CFR Part 30

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

For the reasons given in the preamble, the Department of the Interior proposes to amend part 15 of title 25 and part 30 of title 43 of the Code of Federal Regulations as follows:

Title 25—Indians

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

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

1. The authority citation for part 15 continues to read as follows:

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

2. Revise § 15.202 to read as follows:

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

(a) We will include the items listed in this section in the probate file, except as specified in paragraph (b) of this section.

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

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

(3) Information provided by potential heirs, devisees, or the Tribes on:

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

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

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

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

(i) Accurate and adequate descriptions of all land; and
(ii) Identification of any interests that represent less than 5 percent of the undivided interests in a parcel.

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

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

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

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

(10) 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.

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

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

(13) All the documents acquired under § 15.105.

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

(15) 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.

(16) Valuation reports for those interests to which the special circumstances listed in 43 CFR 30.264 apply.

(b) If the estate includes only cash and the total value of the estate does not exceed \$300 on the date of death, including funds deposited and accruing on or before the date of death, then we will include only the following the probate file.

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

(2) A completed “Data for Heirship Findings and Family History Form” or successor form, certified by BIA as an accurate summary of the information available to BIA that is relevant to the probate of the estate (this form should be completed with information provided by potential heirs, devisees, or Tribes to the greatest extent possible, but BIA is not required to obtain documentation in addition to that provided by those entities).

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

(4) Certification that the decedent’s estate does not contain any interests in trust or restricted land.

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

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

3. In § 15.301, revise the section heading and paragraphs (a) and (c) to read as follows:

§ 15.301 May funds for funeral services be paid from the decedent’s IIM account?

(a) Before the probate case is submitted to OHA, you may request an amount of no more than \$5,000 from the decedent’s IIM account if:

- (1) You are responsible for making the funeral arrangements on behalf of the family of a decedent who has an IIM account; and
- (2) You have an immediate need to pay for funeral arrangements before burial.

* * * * *

(c) In response to a request submitted under paragraph (a) of this section, we may approve, without the need for an order from OHA, costs of no more than \$5,000 from the date of death IIM account balance that are reasonable and necessary for the burial services, taking into consideration:

- (1) The availability of non-trust funds, including availability of any Tribal contribution; and
- (2) Any other relevant factors.

* * * * *

4. Add §§ 15.404 and 15.405 to read as follows:

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

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

(a) The petition must identify the additional property and the source of that property (e.g., inheritance or approval of a deed) and must include the following:

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

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

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

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

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

(b) BIA may submit the petition at any time after issuance of the decision.

(c) BIA must send a copy of the petition and all supporting documentation to each interested party at the time of filing and include certification of service.

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

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

(a) The petition must identify the property that it removed from the estate and explain why the property should not have been included, and must include the following:

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

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

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

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

(b) BIA may submit the petition at any time after issuance of the decision.

(c) BIA must send a copy of the petition and all supporting documentation to each interested party at the time of filing and include certification of service.

Title 43—Public Lands: Interior

PART 30 – INDIAN PROBATE HEARINGS PROCEDURES

5. The authority citation for part 30 continues to read as follows:

Authority: 5 U.S.C. 301, 503; 25 U.S.C. 9, 372-74, 410, 2201 *et seq.*; 43 U.S.C. 1201, 1457.

6. In § 30.100, revise paragraphs (a)(5) and (7) through (9) and (c)(2) and (3) to read as follows:

§ 30.100 How do I use this part?

(a) * * *

| For provisions relating to . . . | consult . . . |
|---|---------------------------|
| * * * * * | |
| (5) Formal probate proceedings before an administrative law judge or Indian probate judge | §§ 30.210 through 30.253. |
| * * * * * | |
| (7) Purchases at probate | §§ 30.400 through 30.424. |
| (8) Renunciation of interests | §§ 30.180 through 30.192. |

| | |
|---------------------------------|---------------------------|
| (9) Summary probate proceedings | §§ 30.200 through 30.209. |
| * * * * * | |

* * * * *

(c) * * *

(2) Sections 30.400 through 30.424 (purchases at probate);

(3) Sections 30.183 through 30.188, except for §§ 30.186(a), (b)(2), and (d) and 30.187;

* * * * *

7. Amend § 30.101 by:

- a. Revising the definition of “Attorney decision maker (ADM)”;
- b. Removing the definitions for “BLM” and “Decision or order (or decision and order)”;
- c. Adding in alphabetical order the definition of “Decision”;
- d. Removing the definition for “De novo review”;
- e. Adding in alphabetical order definitions for “Distribution order”, “Extenuating circumstances”, and “Home agency”;
- f. Revising the definitions of “Indian probate judge” and “Interested party”;
- g. Adding in alphabetical order definitions for “Joint tenancy”, “Lineal descendant”, “Order”, and “Petition to Complete Purchase at Probate”;
- h. Revising the definition of “Summary probate proceeding”; and
- i. Adding in alphabetical order the definition “Tenants in common”.

The revisions and additions read as follows:

§ 30.101 What definitions do I need to know?

* * * * *

Attorney decision maker (ADM) means an attorney with OHA who conducts summary probate proceedings.

* * * * *

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

* * * * *

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

* * * * *

Extenuating circumstances means circumstances including, but not limited to, situations such as a natural disaster affecting the agency office or travel to the agency office or other event affecting the agency office's ability to provide sustained continuous operations and services.

* * * * *

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

* * * * *

Indian probate judge (IPJ) means an attorney with OHA, to whom the Secretary has delegated the authority to hear and decide Indian probate cases, pursuant to 25 U.S.C. 372-2.

Interested party means:

- (1) Any potential or actual heir, except for potential or actual heirs who may or will inherit solely as co-owners of an allotment;
- (2) Any devisee under a will;
- (3) Any person or entity asserting a claim against a decedent's estate;

(4) Any Indian 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.

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

Summary probate proceeding means the consideration of a probate file without a hearing. A summary probate proceeding may be conducted if the estate involves only an IIM account that did not exceed \$300 in value on the date of the death of the decedent.

* * * * *

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

* * * * *

8. In § 30.114, revise paragraph (b) to read as follows:

§ 30.114 Will I receive notice of the probate proceeding?

* * * * *

(b) Potential heirs who may inherit solely as co-owners of an allotment will not be sent actual notice unless they have previously filed a request for notice with BIA or OHA.

9. In § 30.123, revise paragraph (a)(1) to read as follows:

§ 30.123 Will the judge determine matters of status and nationality?

(a) * * *

(1) If relevant, the status of eligible heirs or devisees as Indians;

* * * * *

10. Revise § 30.124 to read as follows:

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

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

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

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

showing an actual date of death, the judge will use the date on which the person was reported missing as the date of death.

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

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

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

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

§ 30.125 [Redesignated as § 30.129]

11. Redesignate § 30.125 as § 30.129.

12. Add a new § 30.125 to read as follows:

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

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

- (1) A will attempts to divide an allotment into two or more distinct portions and devises at least one of those portions;
- (2) The decedent was the sole owner of the allotment;
- (3) The allotment is held entirely in trust or restricted status; and
- (4) The devise describes the portions of the allotment in a manner that allows the judge to readily ascertain which portion of the allotment descends to each intended devisee.

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

§§ 30.126 and 30.127 [Removed and Reserved]

13. Remove and reserve §§ 30.126 and 30.127.

Subpart G [Removed and Reserved]

14. Remove and reserve subpart G.

15. Revise subpart H to read as follows:

Subpart H – Renunciation of Interest

Sec.

- | | |
|--------|---|
| 30.180 | May I give up an inherited interest in trust or restricted property or trust personalty? |
| 30.181 | When may I renounce a devised or inherited interest? |
| 30.182 | Who may renounce an inherited interest on behalf of an heir or devisee who dies before the hearing? |
| 30.183 | Who may receive a renounced interest in trust or restricted land if the land will descend pursuant to a valid will? |
| 30.184 | Who may receive a renounced interest in trust or restricted land if the land will descend by intestate succession? |
| 30.185 | Who may receive a renounced interest in trust personalty? |
| 30.186 | How do I renounce an inherited interest? |
| 30.187 | What happens if I do not designate any eligible individual or entity to receive the renounced interest? |
| 30.188 | What steps will the judge take if I designate a recipient? |
| 30.189 | May my designated recipient refuse to accept the interest? |
| 30.190 | Are renunciations that predate the American Indian Probate Reform Act of 2004 valid? |

- 30.191 May I revoke my renunciation?
30.192 Does a renounced interest vest in the person who renounced it?

§ 30.180 May I give up an inherited interest in trust or restricted property or trust personalty?

You may renounce an inherited or devised interest in trust or restricted property, including a life estate, or in trust personalty if you are 18 years or older and not under a legal disability.

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

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

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

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

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

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

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

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

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

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

(a) An individual appointed by a probate court to act on behalf of his or her private (i.e.,

non-Federal-trust) estate, including but not limited to a personal representative, administrator, or executor; or

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

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

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

- (a) A lineal descendant of the testator;
- (b) A person who owns an undivided trust or restricted interest in the same parcel;
- (c) The Tribe with jurisdiction over the interest; or
- (d) Any Indian.

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

(a) If the interest in trust or restricted land represents 5 percent or more of the entire undivided ownership of the parcel, you may renounce that interest in favor of one or more of the following:

- (1) Eligible heirs of the decedent; or
- (2) The Tribe with jurisdiction over the interest.

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

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

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

§ 30.186 How do I renounce an inherited interest?

To renounce an interest under § 30.180, you must file with the judge a written declaration

specifying the interest to be renounced. The declaration must be signed by you and acknowledged before a notary or judge.

(a) In your declaration, you may retain a life estate in a specified interest in trust or restricted land and renounce the remainder interest, or you may renounce the complete interest.

(b) If you renounce an interest in trust or restricted land, you may either:

(1) Designate an eligible person or entity meeting the requirements of § 30.182 or § 30.183 as the recipient; or

(2) Renounce without making a designation.

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

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

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

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

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

§ 30.189 May my designated recipient refuse to accept the interest?

Yes. Your designated recipient may refuse to accept the interest, in which case the renounced interest will descend to the devisees or heirs of the decedent as if you had predeceased the decedent. When the judge notifies the designated recipient of the renunciation, the judge will specify a deadline for the recipient to file a written refusal to accept the interest. If no written refusal is received before the deadline, the interest will descend to the designated recipient.

§ 30.190 Are renunciations that predate the American Indian Probate Reform Act of 2004 valid?

Any renunciation filed and included as part of a probate decision or order issued before October 27, 2004, the effective date of the American Indian Probate Reform Act of 2004, remains valid.

§ 30.191 May I revoke my renunciation?

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

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

No. An interest in trust or restricted property renounced under this subpart is not considered to have vested in the renouncing heir or devisee, and the renunciation is not considered a transfer by gift of the property renounced.

16. Revise subpart I to read as follows:

Subpart I – Summary Probate Proceedings

Sec.

- 30.200 What is a summary probate proceeding?
- 30.201 May I file a claim in a summary probate proceeding?
- 30.202 What will happen when OHA receives the summary probate file?
- 30.203 What will happen if the funds in the estate are insufficient to provide each heir or devisee at least one cent?
- 30.204 May I request that a formal probate proceeding be conducted instead of a summary probate proceeding?
- 30.205 What must a summary probate decision contain?
- 30.206 What notice of the summary probate decision will the judge or ADM provide?
- 30.207 How do I seek review of a summary probate proceeding?
- 30.208 What happens after I file a request for review?
- 30.209 What will the judge or ADM do with the official record of the summary probate case?

Subpart I – Summary Probate Proceedings

§ 30.200 What is a summary probate proceeding?

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

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

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

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

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

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

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

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

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

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

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

§ 30.205 What must a summary probate decision contain?

The written decision in a summary probate proceeding must be in the form of findings of fact and conclusions of law, with an order for distribution. Each decision must include the following:

- (a) The name, birth date, and relationship to the decedent of each heir or devisee;
- (b) A statement as to whether the heir or devisee is eligible to hold property in trust status and, if relevant, a statement of whether the heir or devisee is "Indian" for purposes of the Act;

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

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

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

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

(g) A statement that the findings in a summary probate decision may not be used to determine the decedent's heirs or devisees for distribution of any trust or restricted land that may be added to the decedent's estate at a later time. If BIA identifies trust or restricted land in the decedent's estate after the completion of the summary probate process, BIA should file a petition for reopening and include all documents required for a formal probate proceeding pursuant to 25 CFR 15.202(a); and

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

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

When the judge or ADM issues a decision in a summary probate proceeding, the judge or ADM must mail or deliver a notice of the decision, together with a copy of the decision, to each affected agency and to each interested party.

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

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

§ 30.207 How do I seek review of a summary probate proceeding?

(a) If you are adversely affected by the written decision in a summary probate proceeding, you may seek review of the summary probate decision. To do this, you must file a request with the OHA office that issued the summary probate decision within 30 days after the date the summary probate decision was mailed. BIA may also seek review within the same deadline.

(b) The request for review must be in writing and signed, and must contain the following information:

- (1) The name of the decedent;
- (2) A description of your relationship to the decedent;
- (3) An explanation of what errors you allege were made in the summary probate decision;
and
- (4) An explanation of how you are adversely affected by the decision.

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

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

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

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

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

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

- (a) The decision, order, and the notices thereof;
- (b) A copy of the notice of hearing on review with proof of mailing, if applicable;
- (c) The record of the evidence received at the hearing on review, if a hearing was held,

including any transcript made of the testimony;

- (d) Any wills, codicils and revocations;
- (e) Any pleadings and briefs filed;
- (f) Interlocutory orders;
- (g) Copies of all proposed or accepted settlement agreements, consolidation agreements,

and renunciations and acceptances of renunciations; and

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

Subpart J – Formal Probate Proceedings

17. Revise §§ 30.210 and 30.211 to read as follows:

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

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

- (1) The most recent will submitted with the probate case and any codicils to that will; and
- (2) A certificate of mailing with the mailing date signed by the person who mailed the

notice.

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

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

addressee.

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

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

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

(c) OHA will post the notice on its website at the following link:

<https://www.doi.gov/oha/organization/phd>.

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

(1) The home agency;

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

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

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

(e) OHA may proceed with the hearing without physical posting of the notice if physical posting was not possible due to:

(1) The agency office being closed or inaccessible; or

(2) Extenuating circumstances preventing personnel physically posting.

18. Revise §§ 30.238 through 30.246 to read as follows:

Sec.

* * * * *

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

30.239 Does any distribution of the estate occur while a petition for rehearing is pending?

30.240 How will the judge decide a petition for rehearing?

30.241 May I submit another petition for rehearing?

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

30.243 May a closed probate case be reopened?

30.244 When must a petition for reopening be filed?

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

30.246 What must be included in a petition for reopening?

* * * * *

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

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

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

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

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

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

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

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

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

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

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

§ 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 decide a petition for rehearing?

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

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

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

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

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

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

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

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

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

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

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

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

§ 30.241 May I submit another petition for rehearing?

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

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

The order on a petition for rehearing will become final on the expiration of the 30 days allowed for the filing of a notice of appeal, as provided in this part and § 4.320 of this chapter. The jurisdiction of the judge terminates when he or she issues an order finally disposing of a petition for rehearing, except for the reopening of a case under this part.

§ 30.243 May a closed probate case be reopened?

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

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

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

§ 30.244 When must a petition for reopening be filed?

(a) A petition for reopening to correct an error of fact or law in a decision or post-

decision order may be filed at any time, but if a petition for reopening is filed by an interested party, or by BIA on behalf of an interested party, it must be filed within 1 year after the interested party's discovery of the alleged error.

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

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

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

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

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

(a) A petition for reopening must:

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

(2) Include all relevant evidence in the form of documents and/or sworn affidavits

supporting any allegations and relief requested in the petition.

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

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

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

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

the petition, as applicable:

- (1) The nature of the error;
- (2) The passage of time;
- (3) Whether the interested party exercised due diligence in pursuing his or her rights;
- (4) Whether the interested party's ancestor exercised due diligence in pursuing his or her rights and whether a failure to exercise should be imputed to the interested party;
- (5) The availability of witnesses and documents;
- (6) The general interest in administrative finality;
- (7) The number of other estates that would be affected by the reopening, if known; and
- (8) Whether the property that was in the estate is still available for redistribution if the case is reopened, if known.

19. Add §§ 30.247 through 30.249 under undesignated center heading "Decisions in Formal Proceedings" to read as follows:

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

A petition for reopening may not:

- (a) Raise issues or objections that were already addressed in a prior rehearing or reopening order;
- (b) Raise issues or objections when the interested party had the opportunity to raise them earlier because they received proper notice of the hearing or summary decision; or
- (c) Submit evidence that was available or discoverable at the time the decision was issued, or available during the rehearing period. The requirements at § 30.238(e) concerning presentation of new evidence on rehearing also apply to the presentation of new evidence on reopening.

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

- (a) The judge may summarily deny the petition for reopening based on deficiencies in the petition. A summary denial is an order in which the judge denies the petition without deciding

the merits of the allegations in the petition and is warranted if:

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

(2) The petition requests the same relief that was previously addressed in a rehearing order or reopening order;

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

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

(5) The petition is based solely on issues or evidence described in § 30.245(c).

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

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

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

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

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

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

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

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

(c) On entry of a final order, including a summary denial, the judge must distribute the order to the petitioner, the agencies, and the interested parties. The order must include a notice

stating that interested parties who are adversely affected, or BIA, have the right to appeal the final order to the Board, within 30 days of the mailing date, and giving the Board's address.

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

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

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

(c) The order on reopening will become final on the expiration of the 30 days allowed for the filing of a notice of appeal, as provided in this part.

§§ 30.250 and 30.251 through 30.254 [Redesignated as §§ 30.500 and 30.503 through 30.506]

20. Redesignate §§ 30.250 and 30.251 through 30.254 as §§ 30.500 and 30.503 through 30.506.

Subpart K [Removed and Reserved]

21. Remove and reserve subpart K.

22. Add new §§ 30.250 through 30.253 under undesignated center heading "Decisions in Formal Proceedings" to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Deny the request for good cause; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Deny the request for good cause; or

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

(d) If the judge does not deny the petition, the judge will issue an order that addresses any modifications to the distribution of the decedent's property resulting from the correction of the

inventory. The order may find that the correction of the inventory does not modify the distribution of any remaining property in the estate.

(e) The judge must furnish copies of the distribution order to the agency and to all interested parties who share in the estate. The distribution order will inform all heirs or devisees, including any surviving spouse, of the right to seek reconsideration to object to the findings and conclusions of the distribution order or to allege an error in BIA's inventory under § 30.128.

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

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

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

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

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

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

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

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

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

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

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

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

(f) The judge may affirm, modify, or vacate the distribution order.

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

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

(i) The order on a petition for reconsideration will become final on the expiration of the 30 days allowed for the filing of a notice of appeal, as provided in this part and § 4.320 of this chapter.

23. Add subpart M to read as follows:

Subpart M – Purchase at Probate

Sec.

30.400 What may be purchased at probate?

30.401 Who may purchase at probate?

30.402 Does property purchased at probate remain in trust or restricted status?

30.403 Is consent required for a purchase at probate?

30.404 How do I initiate a purchase at probate?

30.405 When may I initiate a purchase at probate?

30.406 May I withdraw my request to purchase at probate?

- 30.407 How will OHA address requests to purchase at probate?
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- 30.421 When does a purchased interest vest in the purchaser?
- 30.422 What will happen to any lease income received or accrued from purchased land interests before the purchased interest vests in the purchaser?
- 30.423 What may I do if I disagree with the judge's determination to approve or deny a purchase at probate?
- 30.424 When will the order approving or denying the purchase at probate become final?

§ 30.400 What may be purchased at probate?

(a) The judge may allow an eligible purchaser to purchase at probate all or part of the trust or restricted land in the estate of a person who died on or after June 20, 2006. Any interest in trust or restricted land, including a life estate that is part of the estate (i.e. a life estate owned by the decedent but measured by the life of someone who survives the decedent), may be purchased at probate, except as provided in paragraph (b) of this section.

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

§ 30.401 Who may purchase at probate?

An eligible purchaser at probate is any of the following:

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

(b) Any 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.

§ 30.402 Does property purchased at probate remain in trust or restricted status?

Yes. The property interests purchased at probate must remain in trust or restricted status.

§ 30.403 Is consent required for a purchase at probate?

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

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

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

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

(b) If consent is required from an heir or devisee for a purchase at probate, the heir or devisee may notify OHA at any time after the request for purchase at probate is filed that the heir or devisee is not willing to consent to sell.

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

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

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

(1) The interest will descend by intestate succession;

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

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

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

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

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

§ 30.404 How do I initiate a purchase at probate?

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

§ 30.405 When may I initiate a purchase at probate?

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

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

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

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

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

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

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

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

- (1) A list of all requests to purchase at probate that have been submitted;
- (2) Notification to the parties as to whether consent of the applicable heirs or devisees is required to approve the requested purchase; and
- (3) Direction to BIA to obtain an appraisal or valuation for each interest for which a purchase at probate request has been submitted.

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

- (1) Direct the heirs or devisees to submit written notification within 30 days of the mailing date of the decision or reconsideration order that the heirs or devisees would consider

selling the interest to an eligible purchaser during the probate process if a bid is made for fair market value or greater;

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

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

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

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

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

After a decision or reconsideration order is issued:

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

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

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

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

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

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

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

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

When OHA receives BIA's notification that an appraisal/valuation has been completed and BIA files a Petition to Complete Purchase at Probate, OHA will issue an Order to Submit Bids to all potential bidders to submit bids for property interests with pending purchase at probate requests.

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

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

§ 30.413 Who are potential bidders?

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

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

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

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

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

(2) Eligible heirs;

(3) Eligible devisees;

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

(5) Co-owners of trust or restricted interests in the same allotment who have previously notified BIA in writing that they wish to receive probate notices concerning that allotment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The objection must:

(i) State the reasons for the objection; and

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

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

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

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

(e) If you were directed to submit a bid, you may preserve your right to submit a bid by filing the written objection instead of a bid.

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

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

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

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

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

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

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

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

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

- (1) The parcel and interest sold;
- (2) The identity of the successful bidder;
- (3) The amount of the successful bid; and
- (4) Instructions to the successful bidder to submit payment for the interest.

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

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

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

§ 30.419 What happens after the successful bidder submits payment?

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

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

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

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

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

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

(c) Any partial payment received will be returned.

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

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

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

Any lease income received or accrued from a property interest before the date the purchased interest vests in the purchaser will be paid to the heir(s), devisee(s), or surviving spouse from whom purchase of the interest was made based on the fractional ownership interests in the parcel as determined in the decision or distribution order.

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

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

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

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

§§ 30.500 and 30.503 through 30.506 [Designated as Subpart N]

24. Designate newly redesignated §§ 30.500 and 30.503 through 30.506 as subpart N and add a heading for subpart N to read as follows:

Subpart N – Miscellaneous

25. Add §§ 30.501 and 30.502 to read as follows:

§ 30.501 When is joint tenancy presumed?

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

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

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

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

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

26. Revise newly redesignated § 30.506 to read as follows:

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

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

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

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

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

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

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

27. Add § 30.507 to read as follows:

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

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

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

2206(a)(2)(B).

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

(c) If trust personalty does not descend under paragraph (b) of this section, then to the Indian Tribe in which the decedent was enrolled at the time the decedent died.

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

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

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

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

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

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

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

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

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

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

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

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

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