

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****25 CFR Part 15****Office of the Secretary****43 CFR Part 30**[212A2100DD/AAKC001030/  
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RIN 1094-AA55

**American Indian Probate Regulations****AGENCY:** Bureau of Indian Affairs, Office of the Secretary, Interior.**ACTION:** Final rule.

**SUMMARY:** The Department of the Interior (Department) is finalizing updates to its regulations governing probate of property that the United States holds in trust or restricted status for American Indians, in an effort to continually improve the services the Department provides to individual Indians and Tribes. These updates 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, and specifying which reasons justify reopening of closed probate estates. The revisions 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, and improve notification to interested parties by, among other things, requiring posting of probate notices on a devoted OHA web page.

**DATES:** This rule is effective on January 19, 2022.

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**I. Executive Summary**

This final rule updates regulations that address how OHA probates property that the United States holds in trust or restricted status for American Indians. These revisions 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, and specifying which reasons justify reopening of closed probate estates. The revisions 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, and improve notification to interested parties by, among other things, requiring posting of probate notices on a devoted OHA web page.

**II. Background and History of This Rulemaking**

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. In 2019, the Department identified 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).

In January 2021, the Department then published a proposed rule. 86 FR 1037 (January 7, 2021). In the preamble to the proposed rule, the Department addressed each of the six comment submissions it received in response to the ANPRM. During the public comment period, the Department hosted a Tribal consultation session on February 9, 2021, and a public meeting on February 11, 2021. The Department also held an additional public session at the request of Tribal members on March 9, 2021. The original deadline for comments on the proposed rule was March 8, 2021; however, in response to requests to extend the comment deadline, the Department announced on its website in March that it would be extending the deadline for comments to April 8, 2021, and later to April 29, 2021. 86 FR 19585 (April 14, 2021).

**III. Proposed Rule Comments and Responses**

The Department received 24 written comment submissions on the proposed rule, including three from Tribes. The Department also received several comments during its Tribal consultation and public hearing sessions. The following provides a summary of the comments and the Department's responses.

### A. Trust Funds for Funeral Services (§ 15.301)

The two Tribes that commented on § 15.301 expressed their support of increasing the amount of funding available for funeral services from decedents' Individual Indian Money (IIM) accounts. One Tribe also expressed support for the proposed removal of the requirement for the IIM account to have a specific balance in order for funds to be disbursed for funeral services.

*Response:* The final rule adopts the proposal to increase the funeral service funding available from \$1,000 to \$5,000 and remove the requirement for the IIM account to have a specific balance in order for funds to be disbursed for funeral services.

One Tribe noted that in some circumstances, the descendant's Tribe may pay for funeral costs and that BIA should ensure the Tribe has not paid, to safeguard Individual Indian Money (IIM) accounts. An individual commenter also noted that the Tribe may pay for funeral arrangements.

*Response:* To address these comments, the final rule adds a condition to receiving funds that the requestor has not received sufficient funds from the decedent's Tribe to pay the entire cost of the funeral arrangements. See § 15.301(a)(2).

One commenter requested that the creditor claims regulations that were in place prior to enactment of AIPRA be restored.

*Response:* The proposed rule did not propose any changes to creditor claim provisions beyond increasing the amount of funding from IIM accounts available for funerals. The creditor claims regulations that were in place prior to the enactment of AIPRA were replaced through public notice and comment rulemaking in 2005 and 2008. See 70 FR 11803 (March 9, 2005); 73 FR 67255 (November 13, 2008).

### B. Definitions (§ 30.101)

A commenter requested a new definition for "co-owner" and for the phrase "potential or actual heirs who may or will inherit solely as co-owners."

*Response:* The final rule adds a new definition for co-owner in § 30.101, to mean persons who own an undivided trust or restricted interest in the same parcel in which the decedent owns an interest. No definition of the other phrase was added because the proposed provisions using that phrase were not adopted in the final rule.

### C. Mailed Notice of Probate to Co-Owners (§ 30.114)

Four individual commenters objected to the proposed rule's approach to providing notice of the probate to potential heirs who may inherit solely as co-owners (*i.e.*, persons who own an undivided trust or restricted interest in the same parcel in which the decedent owns an interest). The proposed rule at § 30.114 stated that potential heirs who may inherit solely based on their status as co-owners would not receive mailed notice of a probate proceeding unless they previously filed a request for notice with BIA or OHA. The commenters who objected to this approach stated that the co-owners should continue to receive mailed notice of the probate without having to file a request to receive notice.

*Response:* To address commenters' objections, the final rule retains the current regulations' approach, which requires that all interested parties—including co-owners, when they are potential heirs—receive mailed notice of probate proceedings. See § 30.114 and definition of "interested party" in § 30.101. Nevertheless, it is important to note that a co-owner is not necessarily an heir, and the statute requires actual written notice only to "all heirs." See 25 U.S.C. 2206(m). A co-owner may potentially be an heir in only 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.

One commenter asked how co-owners would know of the opportunity to purchase decedent's interest at probate if they are not notified of the probate.

*Response:* Under both the current and final rule, co-owners receive mailed notice if they are potential heirs; all other co-owners receive notice through posting.

### D. Determination of Indian Status (§ 30.123)

A Tribe stated its support of limiting determinations as to whether heirs and devisees have Indian status in § 30.123 to those situations where the determinations are necessary for the probate decision and stated that this change would increase efficiency.

*Response:* The final rule includes this proposed change at both § 30.123 and § 30.235, so that judges will make the determination of Indian status only when relevant.

An individual stated that determining Indian status cannot be eliminated because it is relevant in determining whether a person takes in fee or is eligible for Tribal membership. This

individual stated that it is more difficult to identify when Indian status does not have to be determined than to determine the status for everyone, and suggested a chart needs to be prepared to show all situations in which Indian status is relevant.

*Response:* The final rule does not eliminate the requirement to determine Indian status. The final rule adopts the proposed rule provision requiring a determination of Indian status "where relevant." There are situations where Indian status is not relevant, and under the final rule, the judge would not issue a determination of Indian status in those situations; however, the judge would issue a determination of Indian status when that status is relevant.

### E. Presumption of Death (§ 30.124)

A Tribe who commented on the proposed presumption of death provisions agreed that the six-year period should begin on the date of the last known contact with the absent person and stated that allowing for a presumption will improve efficiency while allowing parties to present evidence to rebut the presumption if appropriate.

*Response:* The final rule includes these proposed presumption of death provisions.

An individual stated their opposition to the proposed presumption of death provisions, stating that there are a lot of people who are absent for six years and that should not allow a presumption that they no longer exist without evidence of the person's routine daily activities and social relationships and documentation of the measures taken to locate the person.

*Response:* The requirements for BIA to initiate a probate case when a person has been absent without explanation for six or more years are at § 15.106 and would not change under either the proposed or final rule. The final rule adopts the proposed rule's provisions for allowing the judge to presume that the person died at a certain time (*i.e.*, the date of last contact based on 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.).

### F. Partition (§ 30.125)

A Tribe who commented on the proposed partition section at § 30.125 noted that it is a good idea to allow someone to partition their land by will.

*Response:* The final rule includes these proposed provisions allowing for partition by will.

#### *G. Renunciations (§§ 30.180–30.192)*

The Tribe who commented on the proposed renunciation provisions expressed support of the expanded opportunities for renunciation to protect property from going out of trust.

*Response:* The final rule adopts the proposed renunciation provisions expanding opportunities for renunciation.

An individual stated that there is no downside to allowing maximum opportunities for parties to renounce inheritance of interests. A group of individuals commenting together recounted their experience with a Tribe renouncing an interest in a specific estate.

*Response:* The final rule increases the opportunity for renunciations by allowing renunciations at the rehearing stage. To clarify that entities, in addition to individuals, may renounce, the final rule explicitly adds in § 30.180 that entities may renounce.

#### *H. Summary Probate Proceedings (§§ 30.200–30.209)*

An individual objected to the proposed rule's approach to summary probate proceedings as a violation of due process because affected parties would not receive notice of the probate before the probate decision is issued.

*Response:* The final rule adopts the proposed rule's approach to notice in summary probate proceedings because there is no violation of due process for the following reasons: (1) While interested parties do not receive notice of the summary probate until a probate decision is issued, at that time, the interested parties have the right to file a request for review of the probate decision and the probate decision does not become final unless and until the 30-day period for them to request review has expired without any interested party filing a timely request. This approach mirrors the current summary probate proceeding approach, except that the term "proposed summary probate decision" is no longer used. (2) The proposed and final rule also limit the estates that are subject to summary probate proceedings by lowering the dollar threshold (from \$5,000 to \$300), meaning that interested parties in more estates will receive formal probate proceeding notice. The amount of due process that is appropriate depends upon the circumstances, and this rule's approach appropriately considers the circumstances. (3) Other revisions to the

summary probate process that allow estates to be handled more efficiently obviate the need for notice prior to the issuance of the summary probate decision: 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 also 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 a summary probate proceeding decision to file a request for review and streamlines that review process by allowing for reconsideration rather than de novo review.

A commenter stated that eliminating hearings for simple estates undermines due process and that more due process is owed because of the trust responsibility. Another commenter stated that due process should be afforded even for small estates.

*Response:* Due process is still being afforded to interested parties in summary probate proceedings because, as explained above, the summary probate decision does not become final until the period for interested parties to request review has passed. As noted above, this approach mirrors the current approach except that the probate decision is no longer being called a "proposed summary probate decision."

A Tribe stated their support of disallowing claims against small estates in summary probate proceedings. An individual asked for an explanation for disallowing claims.

*Response:* The final rule continues to disallow claims with the goal of efficient handling of low value cash-only estates.

A commenter stated that summary probate proceedings should not be applied to estates containing real property.

*Response:* Summary probate proceedings are available only for cash-only estates.

One Tribe objected to reducing the monetary threshold for estates from \$5,000 to \$300 for summary probate.

*Response:* The Department considered this comment and determined that the summary process will be more effective if it focuses on estates that are valued at \$300 or less. The Department concluded that there is a value to conducting formal probate proceedings for cash only estates valued between \$301 and \$5,000.

The same Tribe objected to allowing 30, rather than 10, days in § 30.208 for OHA to notify the agencies and interested parties that a request review of a summary probate decision has been filed, noting that the extension conflicts with the stated purpose of the revisions to make the process more efficient.

*Response:* The rule expanded the time for OHA to notify agencies and interested parties that a request for review of a summary probate decision has been filed, because this expansion is necessary to allow OHA flexibility in balancing workloads and the maximum additional 20 days this could add to the process is outweighed by the efficiencies gained from eliminating the option for converting summary probate proceedings to formal probate proceedings.

One commenter suggested the Department use a "transfer on death deed" for small estates, rather than the summary probate process to allow assets to transfer to a single beneficiary immediately upon decedent's death without having to go through any OHA process.

*Response:* The Department has reviewed the possibility of allowing for "payable on death" provisions but has determined that a legislative change is necessary to provide authority for such an approach.

An individual commenter requested the definition of "summary probate proceeding" and the provision at § 30.200(b) be revised to add the phrase "and does not include any trust or restricted land."

*Response:* The final rule does not incorporate these edits because the definition and § 30.200(b) are both clear in saying that the estate includes "only an IIM account" and "only funds in an IIM account," respectively.

#### *I. Posted and Published Notice of Probate (§ 30.211)*

Two Tribes and two individuals expressed concern about the proposal to allow for no physical posting of the formal probate proceeding if the agency office is closed or inaccessible or if extenuating circumstances prevent personnel physically posting. One of these Tribes stated that it would be helpful to post at the local BIA agency when possible. The other Tribe stated that there should be physical posting in at least one public location.

*Response:* To address these comments, the final rule requires physical posting in at least one location: The agency or, if posting at the agency is not possible due to the agency office being closed or inaccessible, then at a conspicuous place near that agency. The

final rule does not adopt the proposal to allow for no physical posting in some circumstances and deletes the condition for extenuating circumstances preventing personnel physically posting as well as the proposed definition for “extenuating circumstances” in § 30.101.

Two Tribes expressed their support for posting hearing notices on a central website. One of the Tribes recommended a centralized website for all notices related to probate cases and other non-probate matters. An individual also expressed support for posting notices on OHA’s website.

*Response:* The final rule includes the proposed provision requiring OHA to post probate notices on its website. BIA is also working on making additional appropriate information on the probate process available on its website.

One Tribe agreed with the proposal to remove the requirement for newspaper notices as no longer necessary; however, another Tribe noted that publication in the Tribal newspaper may better reach elders in the community.

*Response:* The final rule adds that an OHA judge may cause notice to be published in a local newspaper or other publication if the judge determines that additional notice is appropriate. *See* § 30.211(d).

#### *J. Rehearing (§§ 30.238–30.242) and Reopening (§§ 30.243–30.249)*

The Tribe that commented on the rehearing and reopening provisions supported imposing limitations on reopening to avoid prolonging the probate, limiting who may seek rehearing to only interested parties, requiring a rehearing to be based on correcting a substantive error, and allowing a rehearing petition to be considered as a reopening petition if not timely filed so the petitioner would not have to refile. The Tribe also supported prohibiting successive petitions for rehearing by the same party to prevent parties from abusing the process and supported the limit of one year (from discovery of the error) for reopening when an individual or BIA on behalf of an individual for reopening and requiring a showing of an error of fact or law.

*Response:* The final rule adopts all these proposed provisions.

An individual stated the provisions barring persons from seeking post-decision review because they were not present at the original hearing does not account for how poor U.S. mail service is on Indian reservations.

*Response:* Neither the proposed nor final rule bar persons who were not present at the original hearing from

seeking post-decision review. *See* § 30.238(d)(1) (“whether or not you attended the hearing.”)

The same individual objected to the 30-day period for seeking a rehearing (at § 30.238(a)) and stated that the 60-day period allowed under regulations in place before AIPRA was enacted should never have been changed.

*Response:* The period for seeking reopening has been 30 days since 2008 and there have been no practical issues with that time period, as most challenges are resolved quickly and 60 days needlessly prolongs the process.

A commenter objected to limitations on petitions to reopen, noting that individuals fail to participate in probates for legitimate reasons.

*Response:* The limitations on petitions to reopen apply to those who received proper notice of the probate and so had the opportunity to participate in the probate but did not avail themselves of that opportunity.

An individual stated that any legitimate family member should be allowed to petition the judge to reopen a probate.

*Response:* Family members who are interested parties should receive sufficient notice and opportunity to participate in the probate; if they have not received sufficient notice, then they may seek reopening if proper grounds are shown.

A Tribe stated that an explicit timeframe, such as 10 days, should be added for OHA to notify BIA of the filing of a petition for rehearing, rather than “as soon as practicable.”

*Response:* The final rule retains the phrase “as soon as practicable” rather than adding a specific period because this phrase recognizes the urgency but allows for more flexibility than a specific number of days would afford.

An individual stated that the season for reopening petitions to be filed runs indefinitely under proposed § 30.243, and that an end point should be added to establish finality and certainty.

*Response:* The final rule does not add an outer bound deadline because a deadline would limit the judge’s discretion in balancing whether the need to reopen to correct the error outweighs the interests of the public and heirs and devisees in the finality of the probate proceeding.

An individual suggested certain clarification edits, including adding to § 30.241 that a rehearing is for the same probate and adding to § 30.243 that reopening petitions are filed with the judge.

*Response:* The final rule incorporates these suggested edits.

The same individual suggested adding a new paragraph (c) to § 30.245, regarding the legal standard for reopening, to require the judge to notify interested parties of a determination to reopen.

*Response:* The judge notifies interested parties under § 30.248(c) of the final order. This final rule provision is broader than the current regulations, which require notification only to affected parties.

This individual also suggested adding to § 30.246(c)(6), that in considering the interest in administrative finality the judge should consider “a concise justification of why and how the information provided in support of the petition to reopen would lead the judge to determine that the need to correct the error outweighs the interests of the public and heirs or devisees in the finality of the probate proceedings.”

*Response:* The final rule does not add this additional language because the substance of the suggested language is already set out in paragraphs (a) and (b), as well as the introductory language in paragraph (c) of § 30.246.

The individual commenter expressed agreement with § 30.248(b)(2)(iii) and recommended adding a requirement to suspend any changes to title to the underlying property while the reopening procedures are pending.

*Response:* The final rule states that the judge will suspend further distribution of the estate or income during the reopening proceedings, if appropriate.

#### *K. Correction of Non-Substantive Errors in Probate Decision (§ 30.250)*

A Tribe expressed support for authorizing BIA to make non-substantive corrections to a probate decision but noted that OHA should have final authority over any corrections.

*Response:* Under the proposed and final provisions, BIA contacts OHA in all cases to issue a correction to a probate decision.

Another Tribe expressed general support for allowing OHA to address typographical and other non-substantive errors in a probate decision without reopening a probate case, but recommended clearly defining what would be a “non-substantive error.”

*Response:* The regulation at § 30.250 states that errors are non-substantive if they are merely typographical, clerical, or their correction would not change the distribution of a decedent’s property.

*L. Inventory Corrections: New Property Added After Probate Decision (§ 15.404/§ 30.251) and Incorrectly Included Property (§ 15.405/§ 30.252)*

A Tribe supported the proposed process for reconsideration of a distribution order directing distribution of additional property or modifying distribution, rather than requiring parties to appeal a final order.

*Response:* The final rule includes the proposed process for reconsideration of the distribution order and clarifies that if an interested party raises an inventory dispute in the petition for reconsideration, the judge may order that the distribution order be vacated and remand BIA's petition to the BIA to resolve the inventory dispute. *See* § 30.253(f).

An individual stated that the regulations that were in place prior to the enactment of AIPRA worked fine by allowing for administrative modifications.

*Response:* The regulations that were in place prior to the enactment of AIPRA are no longer relevant because enactment of AIPRA changed the legal landscape.

An individual stated that the probate decision should include verbiage stating that if any other property is later discovered that should have been part of the estate, then it must be distributed according to the decision, rather than having to reopen the case to add property.

*Response:* Under AIPRA, property may pass differently depending on whether the property constitutes greater than or less than 5% of undivided interests. Specific will language, renunciations, special statutes, or approved Tribal probate codes may also lead to property passing differently than set out in a decision. Judges direct distribution of property specifically identified in the inventory. Adopting the approach suggested by the commenter would put BIA, rather than the judge, in the position of having to determine the appropriate distribution.

An individual suggested adding a deadline for petitions to add or omit property from the inventory.

*Response:* The final rule does not adopt this suggestion because imposing a limitation would result in inaccurate distributions and property that is never distributed.

An individual suggested adding "and/or minerals only estates" following "trust or restricted land" in § 15.404(a)(1).

*Response:* The final rule does not adopt this suggestion because minerals only estates are already included in

"trust or restricted land" for purposes of this section.

An individual stated that "trust or restricted property" is used in § 30.251 for the first time in the proposed rule and suggested using "trust or restricted land" for consistency.

*Response:* The current regulations and final rule define both "trust property" and "restricted property." "Trust land" is used in some instances to distinguish from "trust property" because "trust property" includes personalty.

An individual requested clarification of the phrase "a certification that all interested parties have been associated to the case and their names and addresses are current" that appears in § 15.404(a)(5), § 15.405(a)(4), § 30.251(b)(5), and § 30.252(b)(4).

*Response:* The certification the commenter is inquiring about is certification from the BIA to OHA that all the interested parties have been associated to (*i.e.*, identified as interested parties in) that particular case in the Department's probate system. No change was made to the rule to clarify because the language relates to an internal Departmental procedure.

An individual noted that § 30.252 appears to repeat the process covered in § 15.405(a).

*Response:* Part 15 addresses BIA processes, while Part 30 addresses OHA processes; each has a role in the process as set out in the applicable part.

An individual suggested an edit to § 30.252(b) to clarify who is petitioning for the removal of property and who is reviewing the petition.

*Response:* The final rule changes the pronoun "it" to "BIA" to clarify that BIA removes the property then petitions OHA for an order addressing any changes in distribution resulting from the correction.

An individual requested adding a provision to § 30.252(d) requiring BIA to suspend further distribution of the estate during reopening and suspend any changes to title to the underlying property during the reopening proceeding.

*Response:* The Department determined that the suspension of the estate distribution while awaiting OHA's determination is more suited to internal procedures and is considering possible modifications therein.

An individual requested adding a provision to § 30.252 to require the judge to notify interested parties of the determination to reopen.

*Response:* Notifications to interested parties are provided in § 30.252(e).

An individual provided a personal account of a probate in which they believe errors in the inventory of

decendent's land resulted in loss of an inheritance.

*Response:* The procedures in these regulations provide safeguards to allow for corrections to estate inventories.

*M. Purchase at Probate (Subpart M)*

An individual stated that changes to the purchase at probate process in the regulations must be preceded by substantive amendments to AIPRA.

*Response:* AIPRA's existing provisions authorize purchase at probate, which these regulations implement.

A commenter stated that the proposed rule would eliminate the right of "eligible purchasers" to notice when OHA receives a request to purchase at probate and would put the onus on them to tell BIA that they wish to be told of such purchase offers. The commenter objected saying the approach undermines basic concepts of justice and fair play. Another individual commenter also stated that all eligible purchasers should be kept notified by mail.

*Response:* Neither the proposed nor final rule would eliminate the right of eligible purchasers to notice; rather, the proposed and final rule add an opportunity for co-owners to receive mailed notice when they otherwise would not have. Mailed notice of the probate hearing includes an attached inventory of a decedent's interests in trust or restricted land, and notifies recipients of the possibility of purchase at probate of those interests. *See* § 30.214(g). AIPRA requires that such notice be mailed only to three groups: Eligible heirs, other devisees, and the Indian Tribe with jurisdiction over the interest. *See* 25 U.S.C. 2206(o)(4).

- An heir is any individual or entity eligible to receive property from a decedent in an intestate proceeding.

- A devisee is a person or entity that receives property under a will.

An "eligible purchaser" by contrast, is one of the following:

- An heir or devisee who is receiving an interest in the same parcel of land;
- Any co-owner,
- The Tribe with jurisdiction over the parcel containing the interest, or
- The Secretary on behalf of the Tribe. *See* 25 U.S.C. 2206(o)(2).

Co-owners are eligible purchasers, but are heirs only in certain limited circumstances. In cases in which the co-owners are also heirs, the co-owners will receive mailed notice (of both the hearing and the opportunity to purchase). If co-owners are not heirs, OHA is not statutorily required to send written notice to those co-owners and doing so would significantly delay the

resolution of cases. *See* 25 U.S.C. 2206(o)(4)(B). Instead, under the current process and the proposed and final rule process, co-owners who are not heirs receive notice of a probate proceeding through posting. The proposed and final rule provide an opportunity for co-owners who are not heirs to receive notice. Co-owners may receive mailed notice simply by notifying BIA in writing that they wish to receive it. *See* § 30.413(b)(5). This opportunity for notice is beyond what is required by the statute and what is provided for in the current regulations.

An individual commenter expressed concern with the proposed rule's approach to consent for purchase at probate in § 30.403, noting that the proposed rule would place the responsibility on the heir or devisee to state their unwillingness to sell the property.

*Response:* The final rule adds provisions to make clear that the heir or devisee must affirmatively consent in order for a purchase at probate to occur (rather than state their unwillingness to sell the property to stop a purchase at probate from occurring). The final rule also explicitly states that consent may not be presumed.

An individual objected to the ability of the Tribe to purchase without consent when decedent's interest at the time of death was less than 5 percent of the entire undivided ownership of the land. This individual also opposed that the Secretary can give Tribes the resources to purchase the interest but does not extend that financial support to individual heirs and devisees. Another individual also stated that it is not fair to allow the Secretary to provide financial assistance only to the Tribe to purchase at probate and not individual heirs and devisees.

*Response:* The provision allowing the Tribe to purchase without consent when the decedent's interest at the time of death was less than 5 percent of the entire undivided ownership of the land and the provision allowing the Secretary to provide resources to the Tribe for the purchase are statutory provisions that are not being changed by these regulations. *See* 25 U.S.C. 2206(o)(5). Under the statute and regulations, if the heir or surviving spouse is a member of or eligible for membership in the Tribe, then consent is required. No statutory authority exists for the Secretary to provide resources to individuals who wish to purchase property at probate.

An individual asked whether purchase at probate requires a majority consent of the heirs and devisees or if each individual heir and devisee must consent to sell his or her interest.

*Response:* Each heir and devisee must consent for their interest to be purchased at probate, under both the current regulations and this final rule.

A Tribe stated that the regulations should apply the valuation of mineral interests used in Interior's Land Buy-Back Program to purchase at probate of minerals-only interests.

*Response:* Under AIPRA, a judge may not approve a purchase at probate for less than fair market value of the real property interest. *See* 25 U.S.C. 2206(o)(4)(A). Interior's Land Buy-Back Program for Tribal Nations is a specific time-limited program that is working under particular authorizations which do not apply to probate.

An individual stated that individual Indians who are members of the Tribe with jurisdiction over the land and who own a majority of the interests in a tract or the largest individual interest should have either the first option to purchase or a right of first refusal to purchase any other undivided interest in the tract.

*Response:* Individuals who own an undivided interest in a tract of land can seek to purchase their co-owners' interests at any time, outside of probate. Purchase at probate provides no benefit to co-owner purchasers over purchasing during the decedent's lifetime, as each seller's consent is still required. AIPRA does not provide authority for the regulations to grant a first option to purchase or right of first refusal to Tribal members. AIPRA does at times allow the heir or devisee to select the purchaser, however. *See, e.g.,* 25 U.S.C. 2206(o)(3)(B).

An individual stated that the U.S. Government should ensure that heirs are aware of Tribal governments' ability to purchase property and outline the heirs' right to oppose the sale.

*Response:* AIPRA provides that the Tribe with jurisdiction is an eligible purchaser. The judge will ensure that heirs or devisees are aware of the purchase process through written decisions and orders issued in a particular case. The judge will notify heirs or devisees as to whether consent is required. Heirs or devisees who disagree with a finding that their consent to a purchase is not required can challenge that finding by seeking rehearing.

This individual asserted that her Tribe does not have the authority to participate in purchase at probate because the Tribe's constitution includes a provision stating that the Tribe may not regulate the inheritance of allotted lands within the Tribe's jurisdiction.

*Response:* A Tribe's participation in purchase at probate as an eligible

purchaser is substantively distinct from a Tribe's action to regulate the inheritance of property.

#### N. Miscellaneous

One individual stated that the proposed rule's attempt to define how trust personalty will be distributed in § 30.507 is an impermissible attempt to address a defect in the legislation through regulations.

*Response:* The proposed and final rule at § 30.507 fill a gap using the Secretary's authority where the statute is silent.

A Tribe expressed support for the proposed change clarifying joint tenancy will be presumed in § 30.501 where a testator devised their interest to more than one person.

*Response:* The final rule includes this proposed change.

One individual asked how BIA and OHA identify the property that is included in the estate, and whether it includes land and mineral rights and IIM accounts.

*Response:* In preparing for the probate process, BIA checks the system of record for land, which includes all trust or restricted land and mineral interests, and checks the Trust Funds Accounting System (TFAS) to determine the IIM account assets on record held by decedent.

A commenter stated that there should be language in the regulations for how a valuation is conducted and the expertise needed to issue a valuation.

*Response:* These regulations are specific to probate; in this context, valuation is relevant to purchase at probate. The final rule adopts the proposed rule's language at § 30.411(a) requiring compliance with USPAP or other approved valuation method.

One Tribe and one individual recommended establishing and enforcing timelines for completion of the probate process to improve timeliness.

*Response:* The completion of a probate is dependent on many factors that are outside of BIA and OHA's control including the cooperation of the family in providing documentation for the probate file. These factors, along with the varying levels of complexity among probate cases prevent the Department from imposing specific timeframes.

An individual requested the regulations include a policy to protect individual Indians' property from being taken by Tribal governments and others and noted that the BIA mission includes protection of trust assets of American Indians.

*Response:* The BIA strives to meet its mission in all aspects of the services it provides to individual Indians and Tribes. To the extent that the commenter is requesting that BIA refuse to allow Tribes to purchase interests at probate, the Department is unable to adopt this suggested approach because it would be contrary to direction provided by Congress in AIPRA.

A few individuals stated that Federal policy is being geared to benefit Tribes over individual Indians.

*Response:* The final rule does not benefit Tribes over individual Indians in any manner beyond what is required to implement the statute.

An individual suggested that the Federal Government should provide ongoing information about AIPRA to Tribal citizens.

*Response:* The Department provides information on AIPRA and the probate process at <https://www.bia.gov/bia/ots/dop/your-land>.

A Tribe requested confirmation that the rule does not affect its Secretarially approved inheritance code.

*Response:* These regulatory changes do not affect Secretarially approved Tribal probate codes. The Department intends to continue honoring and applying those Secretarially approved Tribal probate codes.

An individual requested adding to § 15.202(b)(6), addressing what must be included in the probate file if the estate includes only cash, provisions similar to (a)(12) ("Documentation of any payments made on requests filed under the provisions of § 15.301 [Funds for funeral services]") and (a)(13) ("All the documents acquired under § 15.105").

*Response:* The final rule adds these provisions as suggested.

A commenter stated that a copy of the probate file should be sent to each interested party along with the notice of hearing.

*Response:* This comment relates to § 15.504 in the current regulations, which was not proposed for change and is not being changed. The Department allows interested parties access to probate files, but does not automatically send copies of the files to every interested party because doing so would not be efficient and would risk disclosure of personally identifiable information.

An individual stated that BIA should have to correct their errors in front of affected family and the judge.

*Response:* Property is not added or removed to an estate as a result of corrections of mistakes on inventories under this section, but because of a situation such as where the decedent inherits additional property or there was

a probate order change for a predeceased decedent.

A few individuals commented with requests for BIA to store wills or assist individuals with writing wills. One individual asked how BIA obtains access to wills to probate them.

*Response:* These regulations do not address storage or writing of wills. BIA no longer assists individuals with writing wills and relies on family members to provide the decedents' wills. It is each testator's choice to communicate to family members where the will is located and how to gain access to it.

A commenter stated that interested parties have a right to legal counsel but many do not have access to legal counsel either because they cannot afford or cannot find counsel with experience in the field of Federal probate. This commenter stated that the lack of access to counsel combined with the complexity of Indian probate limits due process.

*Response:* Nothing in these regulatory changes affects interested parties' right or ability to engage legal counsel in a probate case. OHA makes every effort to provide due process to interested parties, including unrepresented parties, in probate cases.

Several individuals commented on aspects of AIPRA, such as the single heir rule and whether adopted children should be considered heirs, that are not affected by these regulations.

*Response:* Nothing in these regulatory changes affects the single heir rule or whether adopted children are considered heirs. The Department encourages individuals who would like to provide their trust or restricted property to certain people to either write a will or convey that property through a gift deed during their lifetime; otherwise, the land will pass by intestate succession according to applicable law.

#### **IV. Overview of Final Rule**

The Department is finalizing revisions to its regulations governing probate to provide due process while allowing probate cases to be closed so that distribution to heirs and devisees may occur more quickly. 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 final rule, aims to provide certainty for families and future generations more expeditiously.

#### **A. Summary of Final Rule**

This final rule makes a number of changes throughout the probate regulations to eliminate ambiguities and procedural delays. Specifically, the rule:

- Overhauls the process and criteria for summary probate proceedings, to establish a process for very small estates, to include 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.

- Eliminates the need for the judge to determine the status of eligible heirs or devisees as Indian when not relevant to the probate decision;

- Allows OHA to issue a correction order to correct non-substantive and typographical errors without reopening the probate case;

- Revises processes for adding and removing property from an estate inventory when it is discovered after issuance of the probate decision that additional property must be added to an estate inventory or that property was incorrectly included in the estate inventory, and revises processes for challenging these types of decisions through reconsideration rather than appeal to the IBIA;

- Allows heirs and devisees to renounce their interests at hearings (having their written declarations acknowledged before a judge) and allows 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 final rule also includes revisions to expand notice to interested parties 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;

- Will physically post notice at the agency location or, if the agency office is closed or inaccessible, at a conspicuous location near the agency; and

- May cause notice to be published in a local newspaper or other publication if the judge determines that additional notice is appropriate.

The rule's requirement for OHA to post on its website accommodates 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 final rule clarifies terminology and states 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 rule delineates:

- 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.

The final rule also overhauls 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. This final rule instead sequences 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. Changes From Proposed Rule to Final Rule*

The final rule makes the following changes to the proposed rule.

Section	Topic	Change final rule makes to proposed rule
§ 15.202(b) .....	Items included in the probate file ..	Adds a missing word "in" in the introductory language of paragraph (b). Adds new paragraphs (b)(7) and (b)(8) in response to comment.
§ 15.301(a) .....	Funds for funeral services from decedent's IIM account.	Adds a new paragraph (a)(2) regarding payment of funeral expenses by the decedent's Tribe, in response to comment.
§ 30.101 .....	Definitions .....	Adds a new definition for "co-owner" in response to comment. Deletes definition of "extenuating circumstances" because the provision in which that phrase was used has been deleted in response to comment. Deletes from definition of "interested party" the phrase "except for potential or actual heirs who may or will inherit solely as co-owners of an allotment" because that was removed from § 30.114 in response to comment.
§ 30.114 .....	Notice to co-owners .....	Deletes proposed provision requiring potential heirs who may inherit solely as co-owners to file a request for notice, in response to comment.
§ 30.180 .....	Renunciations .....	Adds new paragraph (b) to make explicit that entities may renounce, in response to comment.
§ 30.183 .....	Renunciation .....	Replaces phrase in paragraph (b) with newly defined term "co-owner," the definition for which was added in response to comment.
§ 30.186 .....	Renunciation .....	Adds reference to a "Tribal resolution" to make explicit how a Tribe may renounce, in response to comment.
§ 30.211 .....	Public notice of formal probate proceeding.	Adds a new paragraph (b) to provide that a judge may also cause notice to be published in a local newspaper, in response to comment. (Updated appropriate citations) Revises proposed paragraph (e) (final paragraph (f)) to require physical posting at the agency or, if posting at the agency is not possible because the agency office is closed or inaccessible, posting in a conspicuous place near that agency, in response to comment.



Section	Topic	Change final rule makes to proposed rule
§ 30.214 .....	Contents of notice regarding purchase at probate.	Adds reference to Federal law or Secretarially approved Tribal probate codes.
§ 30.241 .....	Rehearing .....	Adds a clarification that successive petitions may not be filed “in the same probate case” in response to comment.
§ 30.243 .....	Reopening .....	Adds in paragraph (a) that the petition for reopening must be filed with the judge.
§ 30.248 .....	Decision on reopening .....	Clarifies in paragraph (a)(2) that the petition may be summarily dismissed if it “raises issues or objections that were previously addressed” rather than requesting the same relief, for clarification. Updates citation in paragraph (a)(5).
§ 30.251 .....	Identification of additional property after probate decision.	Clarifies in paragraph (e)(4) that the right of reconsideration must allege an error in the inventory of additional property, rather than the original inventory.
§ 30.252 .....	Identification of incorrectly included property after probate decision.	Clarifies that BIA removes property from the estate inventory in paragraph (b).
§ 30.253 .....	Reconsideration of distribution order.	Adds a new paragraph (f) to clarify that the judge may vacate the distribution order and remand to the BIA. Clarifies in final paragraphs (g) and (h) the “final order on reconsideration” to distinguish from the distribution order.
§ 30.401 .....	Who may purchase at probate .....	Replaces phrase with the newly defined term “co-owner,” the definition for which was added in response to comment.
§ 30.404 .....	Consent in purchase at probate ....	Adds new paragraphs (b) through (d) to clarify how an heir or devisee may consent to purchase at probate, that consent will not be presumed, and that an heir or devisee may withdraw consent any time before the purchase is final.
§ 30.409 .....	Effect of purchase at probate on distribution.	Adds clarification that the decision or distribution order will identify the interest that is subject to a pending request for purchase at probate.
§ 30.410 .....	Continuation of purchase at probate process.	Corrects a typographical error to change “approval/valuation” to “appraisal/valuation.”
§ 30.413 .....	Potential bidders in purchase at probate.	Replaces phrase in (b)(5) with the newly defined term “co-owner,” the definition for which was added in response to comment.
§ 30.418 .....	Payment for purchase at probate ..	Clarifies the successful bidder “must” make payment.
§ 30.506 .....	Law applicable when decedent dies intestate.	Replaces the phrase “co-owners of the parcel” in (b)(1) and (2) with the newly defined term “co-owners,” the definition for which was added in response to comment.

### C. Crosswalk of Current Regulation to New Regulation

The following chart provides a high-level crosswalk of the current regulatory

provisions as compared to the new and revised provisions established by this final rule. Sections not listed in the

“current” column are unaffected by this final rule.

In 25 CFR part 15:

Current §	New §	Summary of changes
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>i.e.</i> , 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 §	New §	Summary of changes
30.100 How do I use this part?	30.100 How do I use this part?	Updates citations (no substantive change).
30.101 What definitions do I need to know?	30.101 What definitions do I need to know?	Deletes definitions of “BLM” and “de novo review” because they are no longer used. 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, and “summary probate proceeding” to reflect the new approach to these proceedings. Adds definitions for “co-owner,” “distribution order,” “home agency,” “joint tenancy,” “lineal descendant,” “order,” “Petition to Complete Purchase at Probate,” and “tenants in common.”

Current §	New §	Summary of changes
30.114 Will I receive notice of the probate proceeding?	30.114 Will I receive notice of the probate proceeding?	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.
30.123 Will the judge determine matters of status and nationality?	30.123 Will the judge determine matters of status and nationality?	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.
30.124 When may a judge make a finding of death?	30.124 When may a judge make a finding of death?	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.
30.125 May a judge reopen a probate case to correct errors and omissions? N/A	30.129 May a judge reopen a probate case to correct errors and omissions? 30.125 May a judge order that a property interest be partitioned as a result of a devise?	Redesignated to follow other section on correcting errors in “Judicial Authority” subpart. No substantive change. New section.
30.235 What will the judge’s decision in a formal probate proceeding contain? N/A	30.235 What will the judge’s decision in a formal probate proceeding contain? 30.250 May a correction order be issued to correct typographical and other non-substantive errors?	Adds “if relevant” so that a judge’s decision need not include the status of eligible heirs or devisees as Indian if their status is not relevant in the probate case. 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?  N/A	30.252 What happens if BIA identifies that property was incorrectly included in a decedent’s inventory?  30.253 What happens if a request for reconsideration of a distribution order is timely made?	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. New section. Adds a process to allow interested parties to seek reconsideration of the distribution order.
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?	Adds a provision regarding purchase of minerals-only interests at probate. Deletes provision regarding timing of requesting a purchase at probate (addressed in proposed § 30.404).
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?	Adds that, to purchase any interest included in an approved consolidation agreement, the consent of the recipient of the consolidated interest is required. Adds new paragraphs (b) through (d), establishing procedures for heirs and devisees to consent to a purchase at probate, that consent will not be presumed, and that consent may be withdrawn. 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.
30.164 What must I do to purchase at probate?  N/A N/A	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?	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. New section. 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? N/A	30.408 What will OHA include in the probate decision or reconsideration order when a purchase at probate is pending? 30.409 How will a pending purchase at probate request affect how the decedent’s property is distributed?	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. 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 purchase at probate?	30.411 How will the interests to be purchased at probate be valued? 30.416 How does OHA decide whether a bid is successful?	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. Adds that the appraisal/valuation must state or include a certification that it is assessing the fair market value of the real property interest. 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.
30.168 How will the judge allocate the proceeds from a sale?	(see 30.419, listed below)	Combines information on allocating proceeds with information on OHA issuing the order approving the sale.

Current §	New §	Summary of changes
30.169 What may I do if I do not agree with the appraised market value?	30.415 What may I do if I do not agree with the determination of fair market value in the Order to Submit Bids?	Expands who may object to a fair market value determination to include any party who may be affected by the determination. Combines time for filing an objection (30 days) and filing supporting documentation (15 days) into a deadline of 45 days for both. Requires objecting party to provide copies of the objection and supporting documents to parties who have an interest in the purchase of the property. Provides that the judge may issue a Modified Order to Submit Bids. Replaces process for objecting to the judge with a process for appealing to IBIA.
30.170 What may I do if I disagree with the judge's determination to approve a purchase at probate?	30.423 What may I do if I disagree with the judge's determination to approve or deny a purchase at probate.	
30.171 What happens when the judge grants a request to purchase at probate?	30.412 What will OHA do when it receives BIA's notification that an appraisal/valuation has been completed?	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.
N/A	30.417 How does the judge notify the parties whether there was a successful bid?	
N/A	30.413 Who are potential bidders?	New section.
	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 any lease income received or accrued from purchased land interests before the purchased interest vests in the purchaser?	New section.
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 personality?	30.180 May I give up an inherited interest in trust or restricted property or trust personality?	Adds clarification that entities may renounce.
30.181 How do I renounce an inherited interest?	30.181 When may I renounce a devised or inherited interest?	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.
	30.186 How do I renounce an inherited interest?	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.
	30.188 What steps will the judge take if I designate a recipient?	New section. Specifies who may renounce on behalf of an heir or devisee who dies before the hearing.
N/A	30.182 Who may renounce an inherited interest 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 in trust or restricted land if the land will pass pursuant to a valid will?	Reorganizes these sections to distinguish based on whether the decedent had a will or not. No substantive change.
30.183 Who may receive a renounced interest of less than 5 percent in trust or restricted land?	30.184 Who will receive a renounced interest in trust or restricted land if the land will pass by intestate succession?	
30.184 Who may receive a renounced interest in trust personality?	30.185 Who may receive a renounced interest in trust personality?	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 personality 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.
30.186 Are renunciations that predate the American Indian Probate Reform Act of 2004 valid?	30.190 Are renunciations that predate the American Indian Probate Reform Act of 2004 valid?	No change.
30.187 May I revoke my renunciation?	30.191 May I revoke my renunciation?	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.
30.188 Does a renounced interest vest in the person who renounced it?	30.187 What happens if I do not designate any eligible individual or entity to receive the renounced interest?	Reorganizes to split into two sections. No substantive change.
	30.192 Does a renounced interest vest in the person who renounced it?	
Subpart I—Summary Probate Proceedings	Subpart I—Summary Probate Proceedings	See specific sections below.

Current §	New §	Summary of changes
30.200 What is a summary probate proceeding?	30.200 What is a summary probate proceeding?	Deletes that the supervising judge may determine whether the proceeding is conducted by a judge or ADM because this is an internal procedure. 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. Specifies what funds are considered in determining the value of the estate.
30.201 What does a notice of a summary probate proceeding contain?	30.206 What notice of the summary probate decision will the judge or ADM provide?	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 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? N/A	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 decision contain?	Reorganizes. Deletes reference to a proposed decision, because the judge decides the case without first releasing a proposed decision. Deletes references to claims. Adds that determination of "Indian" status is necessary only if relevant. Allows renunciation for 30 days after the mailing date of the decision (or within 30 days of an order on review, if applicable). 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.
30.205 How do I seek review of a summary probate proceeding?	30.207 How do I seek review of a summary probate proceeding?	Deletes reference to "de novo" review. Clarifies that BIA may also seek review.
30.206 What happens after I file a request for de novo review?	30.208 What happens after I file a request for review?	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. No longer requires a hearing on review. Clarifies that the judge may issue an order affirming, modifying, or vacating the summary probate decision. Lists who the judge must distribute the final order to and what it must include. Allows appeal to the IBIA.
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?	Provides that OHA transmits the official record back to the agency originating the probate and lists what will be included in the record. Deletes provision requiring OHA to send copies to other affected agencies. (Section specifying that the order becomes final after 30 days is in proposed § 30.206(b)). See affected sections below.
Subpart J—Formal Probate Proceedings	Subpart J—Formal Probate Proceedings	
30.210 How will I receive personal notice of the formal probate proceeding?	30.210 How will I receive personal notice of the formal probate proceeding?	Reorganizes to group all mailed (personal) notice into one section and all public notice into a separate section.
30.211 Will the notice be published in a newspaper?	30.211 How will OHA provide public notice of the formal probate proceeding?	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). 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. Adds requirement for OHA to post notice of all hearings on its website. Adds that the judge may cause the notice to be published in a local newspaper or other publication 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. Adds a provision for physical posting at the decedent's home agency. 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. Adds that if physical posting at the agency office is not possible because the agency office is closed or inaccessible, then the notice must be physically posted at a conspicuous place near that agency.
30.214 What must a notice of hearing contain?	30.214 What must a notice of hearing contain?	Adds to paragraph (g) a specification that the notice of possibilities of purchase and sale of trust or restricted property will be "in accordance with Federal law or Secretarially approved Tribal probate codes."
30.238 May I file a petition for rehearing if I disagree with the judge's decision in a formal probate hearing?	30.238 May I file a petition for rehearing if I disagree with the judge's decision in a formal probate hearing?	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.
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.

Current §	New §	Summary of changes
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?	Deletes the chart and states by whom and the circumstances in which a closed probate case may be reopened.
	30.244 When must a petition for reopening be filed?	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.
	30.245 What legal standard will be applied to reopen a case?	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.
	30.246 What must be included in a petition for reopening?	Expands on what information must be included in a petition for reopening to justify 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?	30.249 What happens when the judge issues an order on reopening?	Combines two sections. No substantive change.
30.246 When will the decision on reopening become final?		
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 presumption of joint tenancy?	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).
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 trust personalty should be distributed?	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.

## V. 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 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 rule in a manner consistent with these requirements

### B. Regulatory Flexibility Act

The Department of the Interior certifies that this 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 rule affects only individuals' estates and does not affect small entities.

### C. Small Business Regulatory Enforcement Fairness Act

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

#### *D. Unfunded Mandates Reform Act*

This 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 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.

#### *E. Takings (E.O. 12630)*

This 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.

#### *F. 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.

#### *G. Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of Executive Order 12988. Specifically, this 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.

#### *H. 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 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 rule affects the probate of trust or restricted property held by individuals, many of whom are likely Tribal members. The Department therefore conducted Tribal consultation on this rule and has included responses to Tribal input in Section III. Proposed Rule Comments and Responses to Comments.

#### *I. Paperwork Reduction Act*

This 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 11/30/2021). 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.

#### *J. National Environmental Policy Act*

This 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.

#### *K. Effects on the Energy Supply (E.O. 13211)*

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

#### **List of Subjects**

##### *25 CFR Part 15*

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 amends

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.*

##### **Subpart C—Preparing the Probate File**

- 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.

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

(8) All the documents acquired under § 15.105.

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

■ 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;

(2) You have not received sufficient funds from the decedent's Tribe to pay the entire cost of the funeral arrangements; and

(3) 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.

\* \* \* \* \*

#### **Subpart E—Probate Processing and Distributions**

■ 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.

#### Subpart A—Scope of Part; Definitions

■ 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) §§ 30.400 through 30.424  
(purchases at probate);

(3) §§ 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 definition of “BLM”;

■ c. Adding in alphabetical order a definition for “Co-owner”

■ d. Removing the definition of “Decision or order (or decision and order)”;

■ e. Adding in alphabetical order a definition for “Decision”;

■ f. Removing the definition of “De novo review”;

■ g. Adding in alphabetical order definitions for “Distribution order” and “Home agency”;

■ h. Revising the definition of “Indian probate judge (IPJ)”;

■ i. Adding in alphabetical order definitions for “Joint tenancy”, “Lineal descendant”, “Order”, and “Petition to Complete Purchase at Probate”;

■ j. Revising the definition of “Summary probate proceeding”; and

■ k. Adding in alphabetical order a definition for “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.

\* \* \* \* \*

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

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

*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 descendant* 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.

\* \* \* \* \*

#### Subpart B—Commencement of Probate Proceedings

■ 8. Revise § 30.114 to read as follows:

**§ 30.114 Will I receive notice of the probate proceeding?**

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

- (a) Potential heirs and devisees named in the probate file;
- (b) Those creditors whose claims are included in the probate file; and
- (c) Other interested parties identified by OHA

**Subpart C—Judicial Authority and Duties**

- 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, consisting of §§ 30.160 through 30.175.
- 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 personality?

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 personality?

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?

**Subpart H—Renunciation of Interest****§ 30.180 May I give up an inherited interest in trust or restricted property or trust personality?**

You may renounce an inherited or devised interest in trust or restricted property, including a life estate, or in trust personality if:

- (a) You are 18 years or older and not under a legal disability; or
- (b) You are an entity.

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

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

(b) If the judge has issued a decision, you may renounce a devised or

inherited interest in any property distributed by the decision:

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

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

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

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

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

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

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

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

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

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

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

- (a) A lineal descendant of the testator;
- (b) A co-owner;
- (c) The Tribe with jurisdiction over the interest; or
- (d) Any Indian.

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

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

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

(b) If the interest in the trust or restricted land represents less than 5 percent of the entire undivided ownership of the parcel, you may renounce that interest in favor of only

one person or entity listed in paragraph (a) of this section, or to one Indian person related to you by blood.

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

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

**§ 30.186 How do I renounce an inherited interest?**

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

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

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

- (1) Designate an eligible person or entity meeting the requirements of § 30.182 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/Ph.D>.

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

(e) Unless one of the circumstances listed in paragraph (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.

(f) OHA may proceed with the hearing without physical posting of the notice at an agency office if the notice is posted in a conspicuous place near that agency office and physical posting at the agency

office was not possible due to the agency office being closed or inaccessible.

■ 18. In § 30.214, revise the introductory text and paragraph (g) to read as follows:

**§ 30.214 What must a notice of hearing contain?**

The notice of hearing under § 30.114 must:

\* \* \* \* \*

(g) In estates for decedents whose date of death is on or after June 20, 2006, include notice of the possibilities of purchase and sale of trust or restricted property in accordance with Federal law or Secretarially approved Tribal probate codes by heirs, devisees, co-owners, a Tribe or the Secretary; and

\* \* \* \* \*

■ 19. In § 30.235, revise paragraph (a)(2) to read as follows:

**§ 30.235 What will the judge's decision in a formal probate proceeding contain?**

\* \* \* \* \*

(a) \* \* \*

(2) If relevant, state whether the heir or devisee is Indian or non-Indian;

\* \* \* \* \*

■ 20. 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 in the same probate case.

#### **§ 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 with the judge.

(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.

■ 21. Add §§ 30.247 through 30.249 to read as follows:

\* \* \* \* \*

Sec.

30.247 What is not appropriate for a petition for reopening?

30.248 How will the judge decide my petition for reopening?

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

\* \* \* \* \*

#### **§ 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 raises issues or objections that were previously addressed in a rehearing order or reopening order;

(3) The petition raises only issues or objections by or on behalf of an

interested party for the first time on reopening and that interested party received proper notice of the hearing or summary decision;

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

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

#### **Subpart K—[Redesignated as Subpart N]**

■ 22. Redesignate subpart K, consisting of §§ 30.250 through 30.254, as subpart N and revise the heading to read as follows:

#### **Subpart N—Miscellaneous**

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

■ 23. In newly redesignated subpart N, redesignate §§ 30.250 and 30.251 through 30.254 as §§ 30.500 and 30.503 through 30.506, respectively.

#### **Subpart J—Formal Probate Proceedings**

■ 24. Add new §§ 30.250 through 30.253 to read as follows:

\* \* \* \* \*

Sec.

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

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

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

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

\* \* \* \* \*

##### **§ 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 of additional property under § 30.128; or

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

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

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

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

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

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

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

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

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

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

(4) A certification that all interested parties have been associated to the case

and their names and addresses are current.

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

(1) Deny the request for good cause; or

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

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

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

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

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

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

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

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

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

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

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

(b) The agencies must not distribute any portion of the estate while the

petition is pending, unless otherwise directed by the judge.

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

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

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

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

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

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

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

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

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

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

**Subpart K—[Reserved]**

■ 25. Add reserved subpart K.

■ 26. 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?
- 30.408 What will OHA include in the probate decision or reconsideration order when a purchase at probate request is pending?
- 30.409 How will a pending purchase at probate request affect how the decedent's property is distributed?
- 30.410 How will the purchase at probate process continue after the decision or reconsideration order is issued?
- 30.411 How will the interests to be purchased at probate be valued?
- 30.412 What will OHA do when it receives BIA's notification that an appraisal/valuation has been completed?
- 30.413 Who are potential bidders?
- 30.414 What will be contained in the Order to Submit Bids?
- 30.415 What may I do if I do not agree with the determination of fair market value in the Order to Submit Bids?
- 30.416 How does OHA decide whether a bid is successful?
- 30.417 How does the judge notify the parties whether there was a successful bid?
- 30.418 When must the successful bidder pay for the interest purchased?
- 30.419 What happens after the successful bidder submits payment?
- 30.420 What happens if the successful bidder does not submit payment within 30 days?
- 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?

## Subpart M—Purchase at Probate

### § 30.400 What may be purchased at probate?

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

(b) Purchase of minerals-only real property interests (*i.e.*, an allotment that does not include a surface interest) may be considered for purchase at probate

only if sufficient evidence of the fair market value of the real property interest is submitted. No interest in a minerals-only property may be purchased at probate on the basis of the value of the minerals themselves.

### § 30.401 Who may purchase at probate?

An eligible purchaser at probate is any of the following:

- (a) Any devisee or eligible heir who is receiving an interest in the same parcel of land by devise or descent in the probate proceeding;
- (b) Any co-owner;
- (c) The Indian Tribe with jurisdiction over the parcel containing the interest; or
- (d) The Secretary on behalf of the Tribe.

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

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

### § 30.403 Is consent required for a purchase at probate?

(a) Except as provided in 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 consent may be given either:
- (1) During a hearing as part of the record; or
  - (2) In writing to OHA.

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

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

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

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

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

- (1) The interest will descend by intestate succession;
  - (2) The judge determines based on the Department's records that the decedent's interest at the time of death was less than 5 percent of the entire undivided ownership of the parcel of land;
  - (3) The heir or surviving spouse was not residing on the property at the time of the decedent's death;
  - (4) The heir or surviving spouse is not a member of your Tribe or eligible to become a member; and
  - (5) The interest is not included in an approved consolidation agreement.
- (f) BIA may purchase an interest in trust or restricted land on behalf of the Tribe with jurisdiction over the parcel containing the interest if BIA obtains consent under paragraph (a) of this section or the conditions in paragraph (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. The decision or distribution order will identify any property interest that is the subject of a pending request for

purchase at probate, and that the property interest will be conveyed with an encumbrance, which will remain on the property interest until the request is fully addressed. The encumbrance does not affect distribution of trust personalty.

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

After a decision or reconsideration order is issued:

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

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

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

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

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

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

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

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

When OHA receives BIA's notification that an appraisal/valuation has been completed and BIA files a Petition to Complete Purchase at Probate, OHA will issue an Order to Submit Bids to all potential bidders to

submit bids for property interests with pending purchase at probate requests.

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

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

**§ 30.413 Who are potential bidders?**

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

- (1) The Tribe with jurisdiction over the property submits the only request to purchase within the deadline; and
- (2) The requirements of § 30.403(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 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 must make payment, according to the instructions in the Notice of Successful Bid, of the full amount of the purchase price no later than 30 days after the mailing date of the Notice of Successful Bid.

#### **§ 30.419 What happens after the successful bidder submits payment?**

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

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

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

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

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

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

(c) Any partial payment received will be returned.

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

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

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

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

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

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

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

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

### **Subpart N—Miscellaneous**

■ 27. 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.

■ 28. 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 as of the decedent's date of death, subject to the exceptions and limitations detailed in 25 U.S.C. 2206(a)(2)(B)–(C).

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

small fractional interests detailed in 25 U.S.C. 2206(a)(2)(D).

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

■ 29. 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.

This action is taken pursuant to delegated authority.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

**Eric Werwa,**

*Deputy Assistant Secretary—Policy and Environmental Management Exercising the delegated authority of the AS–PMB.*

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