

to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that I am filing a copy of this signed certification with this submission to the U.S. Department of Commerce and that I will retain the original for a five-year period commencing with the filing of this document. The original will be available for inspection by U.S. Department of Commerce officials.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

\*\*For multiple representative certifications, all representatives and their firms should be listed in the first sentence of the certification and all representatives should sign and date the certification. In addition, singular pronouns and possessive adjectives should be changed accordingly, e.g., "I" should be changed to "we" and "my knowledge" should be changed to "our knowledge."

[FR Doc. 2011-2761 Filed 2-9-11; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 15

#### Office of the Secretary

#### 43 CFR Parts 4, 30

[Docket ID: BIA-2009-0001]

RIN 1076-AF07

### Indian Trust Management Reform— Implementation of Statutory Changes

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule implements the latest statutory changes to the Indian Land Consolidation Act, as amended by the 2004 American Indian Probate Reform Act and later amendments (ILCA/AIPRA). These changes primarily affect the probate of permanent improvements owned by a decedent that are attached to trust or restricted property owned by the

decedent. These changes also affect the purchase of small fractional interests at probate by restricting who may purchase without consent and what interests may be purchased without consent.

**DATES:** This interim final rule is effective on February 10, 2011. Submit comments by March 14, 2011.

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

—*Federal rulemaking portal:* <http://www.regulations.gov>. The rule is listed under the agency name "Bureau of Indian Affairs." The rule has been assigned Docket ID: BIA-2009-0001. If you would like to submit comments through the Federal e-Rulemaking Portal, go to <http://www.regulations.gov> and do the following. Go to the box entitled "Enter Keyword or ID," type in "BIA-2009-0001," and click the "Search" button. The next screen will display the Docket Search Results for the rulemaking. If you click on BIA-2009-0001, you can view this rule and submit a comment. You can also view any supporting material and any comments submitted by others.

—*E-mail:* [Michele.Singer@bia.gov](mailto:Michele.Singer@bia.gov). Include the number 1076-AF07 in the subject line of the message.

—*Fax:* (505) 563-3811. Include the number 1076-AF07 in the subject line of the message.

—*Mail:* Michele Singer, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104. Include the number 1076-AF07 in the subject line of the message.

—*Hand delivery:* Michele Singer, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104. Include the number 1076-AF07 in the subject line of the message.

We cannot ensure that comments received after the close of the comment period (*see DATES*) will be included in the docket for this rulemaking and considered. Comments set to an address other than those listed above will not be included in the docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:**

Michele Singer, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104, phone: (505)

563-3805; fax: (505) 563-3811; e-mail: [Michele.Singer@bia.gov](mailto:Michele.Singer@bia.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Description of Changes
  - A. Purchase at Probate
  - B. Permanent Improvements
    - 1. Rule of Descent When Decedent Died Intestate
    - 2. Presumption When Decedent Died Testate (*i.e.*, With a Valid Will)
    - 3. Jurisdiction Over Permanent Improvements
    - 4. Recourse To Avoid Potential Diminishment or Destruction of Permanent Improvements Pending Probate
  - C. List of All Regulatory Changes Made by This Interim Final Rule
- III. Procedural Requirements
  - A. Regulatory Planning and Review (E.O. 12866)
  - B. Regulatory Flexibility Act
  - C. Small Business Regulatory Enforcement Fairness Act
  - D. Unfunded Mandates Reform Act
  - E. Takings (E.O. 12630)
  - F. Federalism (E.O. 13132)
  - G. Civil Justice Reform (E.O. 12988)
  - H. Consultation With Indian Tribes (E.O. 13175)
  - I. Paperwork Reduction Act
  - J. National Environmental Policy Act
  - K. Information Quality Act
  - L. Effects on the Energy Supply (E.O. 13211)
  - M. Clarity of This Regulation
  - N. Public Availability of Comments
  - O. Determination To Issue an Interim Final Rule With Immediate Effective Date

### I. Background

On November 13, 2008, the U.S. Department of the Interior published a final rule related to Indian trust management in the areas of probate, probate hearings and appeals, Tribal probate codes, and life estates and future interests in Indian land (73 FR 67256). The final rule updated regulations to, among other things, implement ILCA/AIPRA. On November 20, 2008, Congress passed a bill that made several changes to ILCA/AIPRA. On December 2, 2008, the President signed the bill into law. *See* Public Law 110-453. This interim final rule updates the affected regulatory provisions to reflect the changes that Public Law 110-453 made to ILCA, as amended by AIPRA.

### II. Description of Changes

There are two main subjects covered by this interim final rule: purchase at probate and the treatment of permanent improvements. This interim final rule also makes additional, non-substantive clarifications.

### A. Purchase at Probate

Public Law 110–453 amended statutory provisions regarding the purchase at probate of small undivided interests. Previously, ILCA/AIPRA had stated that an heir's consent was not required for the purchase of an interest that would pass to the heir through intestate succession if the interest passing was less than 5 percent of the entire undivided ownership in the parcel. The public law changed ILCA/AIPRA, to provide that the heir's consent is not required for the purchase of an interest, under specified conditions, where the decedent's interest in the parcel, rather than the interest passing to the heir, is less than 5 percent of the entire undivided ownership in the parcel.

The conditions specified in the public law for purchase without consent are that: (1) The interest is passing by intestate succession; (2) the decedent's interest in the land represents less than 5 percent of the entire undivided ownership in the parcel; (3) either the Secretary, under the Indian Land Consolidation Program on behalf of the Tribe with jurisdiction over the parcel, or the Tribe itself, purchases the interest; (4) the heir or surviving spouse is not living on the parcel; and (5) if the Tribe is the purchaser, the heir or surviving spouse is not a member or eligible to be a member of the Tribe.

Therefore, under the changes made by the public law, the consent of an heir is not required for purchase of an interest at probate that would pass via intestate succession, if the decedent's interest is less than 5 percent of the entire undivided ownership in the parcel, and if the Secretary or the Indian Tribe with jurisdiction, under the circumstances explained above, purchases the interest.

To address this statutory change, this interim final rule revises 43 CFR 30.163 to change the threshold for consent to whether the decedent owns less than 5 percent of the entire undivided ownership in the parcel, and to incorporate the new limitations regarding who may purchase at probate without consent.

### B. Permanent Improvements

Public Law 110–453 amended ILCA/AIPRA to specify what happens to permanent improvements when someone dies owning both trust land, or an interest in trust land, and a permanent improvement, or an interest in the permanent improvement, attached to that trust land.

#### 1. Rule of Descent When Decedent Died Intestate

The Public Law established a rule of descent for permanent improvements attached to trust or restricted property where the decedent owns an interest in both the permanent improvement and the underlying trust or restricted property. The rule of descent is that the decedent's interest in any permanent improvement attached to trust property will descend with the decedent's interests in the underlying trust property, where the decedent died intestate. This rule of descent will apply only if a Tribal probate code approved pursuant to 25 U.S.C. 2205, or approved consolidation agreement does not provide for a different descent. If a Tribal probate code approved pursuant to 25 U.S.C. 2205 or approved consolidation agreement specifies how permanent improvements will descend, then that code or agreement will govern. If there is a renunciation, then the person receiving the interest in the underlying trust or restricted land under the renunciation will also receive the interest in the permanent improvement.

The rule of descent applies only to decedents who died on or after December 2, 2008 (the effective date of Pub. L. 110–453). Therefore, if a decedent owned an interest in a parcel that is trust or restricted property, and also owned an interest in the house on that parcel, then ownership of the decedent's interest in the house passes to the heir(s) receiving the decedent's interest in the parcel, if (1) The decedent died on or after December 2, 2008; (2) there is no applicable and approved Tribal probate code or consolidation agreement among the heirs stating otherwise; and (3) the heir(s) have not renounced the interest in the parcel.

#### 2. Presumption When Decedent Died Testate (*i.e.*, With a Valid Will)

Public Law 110–453 also amended ILCA/AIPRA to establish a presumption for permanent improvements attached to trust or restricted property where the decedent owned an interest in both the permanent improvement and the underlying trust or restricted property. When a decedent dies with a valid will that devises the decedent's interests in trust land, the presumption is that the devise includes the interest of the decedent in any permanent improvements attached to that trust land.

The presumption applies only to decedents who died on or after December 2, 2008. Therefore, if a decedent owned an interest in a parcel

that is trust or restricted property, and also owned an interest in the house on that parcel, then ownership of the decedent's interest in the house passes to the devisee(s) receiving the decedent's interest in the parcel, if (1) the decedent died on or after December 2, 2008; and (2) the will does not expressly provide otherwise.

#### 3. Jurisdiction Over Permanent Improvements

As a general rule, the Department considers permanent improvements to be non-trust property, and OHA does not probate them. The Department does not keep an inventory of permanent improvements on trust or restricted lands, nor is the Department responsible for maintaining the covered permanent improvements on trust lands. Nevertheless, in cases where the decedent died on or after December 2, 2008, the Administrative Law Judges (ALJs) and Indian Probate Judges (IPJs) will include in probate orders a general statement of the substantive law of descent or devise of permanent improvements. The orders will determine the heirs or devisees of trust property and direct its distribution, as usual. The courts of competent jurisdiction that normally probate non-trust property (*i.e.*, Tribal and State courts) would then apply the substantive rules of descent or devise, as stated in ILCA/AIPRA, to any non-trust permanent improvements, based on the ALJ's or IPJ's determination of heirs or devisees and their respective interests.

If the Tribal or State court has already completed the probate of the decedent's non-trust property by the time the ALJ or IPJ issues a probate order, the heirs or devisees may have the opportunity to petition the Tribal or State court to reopen the estate, if necessary, to reflect the proper descent or devise of the decedent's interest in any non-trust permanent improvements.

### C. List of All Regulatory Changes Made by This Interim Final Rule

#### “Trust estate”

The interim final rule changes “trust estate” to “estate” in several sections: 25 CFR 15.1, 15.2 (definition of “you or I”), 15.12; 43 CFR 4.320, 30.100, 30.101 (definition of “you or I”), 30.110, 30.140. This is not a substantive change. This change has been made because “estate” is already defined to mean “the trust or restricted land and trust personalty owned by the decedent at the time of death,” making the phrase “trust estate” redundant.

## 25 CFR Part 15

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

In the definition of “summary probate proceeding,” the word “does” is changed to “did” to correct the tense. This is not a substantive change; it is merely a grammatical change that is appropriate because the threshold amount will be determined as of a past date (the date of death).

## Section 15.10 What assets will the Secretary probate?

The interim final rule deletes references to “estate” in this section to eliminate the redundancy in the phrase “trust or restricted land or personalty in an estate” and to better explain what the Secretary probates. For consistency, the interim final rule also changes the heading to this section from “Will the Secretary probate all the land and assets in an estate?” to “What assets will the Secretary probate?” This change clarifies what the Secretary probates by explaining what is in an estate, rather than referring to the term.

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

This section addresses what items the agency must include in the probate file. Paragraph (e) requires that a certified inventory of trust and restricted land be included, and states that such inventory should include “accurate and adequate descriptions of all land and appurtenances.” The interim final rule deletes the phrase “and appurtenances” because BIA does not maintain records on appurtenances, and appurtenances have not been, and are not included in certified inventories. Deleting “and appurtenances” is consistent with the change that Public Law 110–453 made to the definition of “land” in 25 U.S.C. 2201(7). That definition used to read, “any real property, and includes within its meaning for purposes of this Act improvements permanently affixed to real property.” Congress deleted the reference to “improvements permanently affixed to real property,” and the definition now reads simply, “any real property.”

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

This section clarifies that a Tribal probate order, where one exists, is among the documents that the Department may request to complete the probate file. While not binding on the Department, the Tribal probate order may provide relevant information regarding heirship, paternity, adoption,

marriage, divorce, or other relevant matters. OHA may also refer to the Tribal probate order for determinations about non-trust permanent improvements that may be relevant in cases involving consolidation agreements and renunciations.

## 43 CFR Part 4

## Section 4.324 How is the record on appeal prepared?

The interim final rule amends this section to more accurately reflect the actual process as set forth in 43 CFR 30.233, wherein the ALJ provides the record to the LTRO after the probate is completed (rather than the agency providing the record to the LTRO). In the event of an appeal to the Interior Board of Indian Appeals, the ALJ or IPJ must also provide a transcript of the hearing to the LTRO, for inclusion in the record.

The interim final rule also updates the language, deleting the verb “conform” and instead using plain language to explain that the LTRO copies the record before sending the original to the Board and a copy to the agency to have available for public inspection. Where the current regulation specifies that the LTRO must send the original record to the Board by certified mail, the interim final rule adds “or other service with delivery confirmation” to allow for the use of delivery services such as DHL, FedEx, and UPS.

## 43 CFR Part 30

## Section 30.100 How do I use this part?

In addition to replacing “trust estate” with “estate” in paragraph (a)(6), the interim final rule adds “or restricted” to clarify that probate of the estates of Indians who die possessed of trust or restricted property are governed by this part.

## Section 30.101 What definitions do I need to know?

The interim final rule adds a definition of “covered permanent improvement” to this section to incorporate the definition from Public Law 110–453, which establishes rules of descent and devise.

In the definition for “summary probate proceeding,” the word “does” is changed to “did” to correct the tense. This is the same change made to the definition in 25 CFR 15.2, and is not a substantive change.

## Section 30.102 What assets will the Secretary probate?

As in 25 CFR 15.10, the interim final rule deletes references to “estate” in this section to eliminate the redundancy in

the phrase “trust or restricted land or personalty in an estate” and to better explain what the Secretary probates. For consistency, the interim final rule also changes the heading to this section from “Will the Secretary probate all the land and assets in an estate?” to “What assets will the Secretary probate?” This change clarifies what the Secretary probates by explaining what is in an estate, rather than referring to the term.

## Section 30.128 What happens if an error in BIA’s estate inventory is alleged?

The interim final rule deletes the word “interests” from this section as superfluous because the phrase “trust property” includes any interests therein. This is not a substantive change.

## Section 30.142 Will a judge authorize payment of a claim from the trust estate if the decedent’s non-trust estate was or is available?

The interim final rule changes “trust or restricted property” to “estate,” and changes “estate” to “property,” for clarity.

## Section 30.143 Are there any categories of claims that will not be allowed?

The interim final rule adds the word “the” where it was inadvertently omitted.

## Section 30.151 May the devisees or eligible heirs in a probate proceeding consolidate their interests?

The interim final rule adds that a consolidation agreement may include the interests of the decedent, the devisees, or eligible heirs in any covered permanent improvements attached to a parcel of trust or restricted land in the decedent’s trust inventory. The rule also adds “devisees or” where it was inadvertently omitted and simplifies the language by omitting the statutory references.

## Section 30.160 What may be purchased at probate?

The interim final rule deletes the phrase “of a trust or restricted estate” because the meaning of this phrase is already captured in “estate.”

## Section 30.163 Is consent required for a purchase at probate?

The interim final rule rewrites this section to incorporate the change Public Law 110–453 made to the threshold for consent. The threshold is now measured by the decedent’s percentage of ownership in a parcel, rather than the interest passing to the heir. The revised section also incorporates the change

Public Law 110–453 made allowing only the Tribe with jurisdiction over the interest or the Department, on behalf of the Tribe with jurisdiction, to purchase certain intestate interests without consent.

**Section 30.167** How does OHA decide whether to approve a purchase at probate?

The interim final rule incorporates the change Public Law 110–453 made to ILCA/AIPRA, which specifies that, if multiple eligible purchasers make requests to purchase at probate, the heir, devisee, or surviving spouse may select the eligible purchaser.

**Section 30.170** What may I do if I disagree with the judge's determination to approve a purchase at probate?

The interim final rule updates a section number reference to accommodate the new section 30.236.

**Section 30.236** How are covered improvements treated?

The interim final rule adds a new section to detail how “covered permanent improvements,” which are defined in section 30.101, are treated. Remaining sections are renumbered to accommodate the insertion of this new section.

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

The interim final rule updates a section number reference to accommodate the new section 30.236.

**Section 30.243** May a closed probate case be reopened?

The interim final rule corrects a paragraph numbering error that resulted in two paragraphs (a)(2); the second has been renumbered (a)(3).

**Section 30.262** When may a Tribe exercise its statutory option to purchase?

The interim final rule updates a section number reference to accommodate the new section 30.236.

**Section 30.266** When is a final decision issued?

The interim final rule updates a section number reference to accommodate the new section 30.236.

### III. Procedural Requirements

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

This interim final rule is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive

Order 12866. This rule implements statutory changes regarding permanent improvements owned by a decedent on trust or restricted property owned by the decedent and purchased at probate.

The changes regarding permanent improvements incorporate statutory changes regarding the rule of descent, in intestate cases, and a presumption, in testate cases, for permanent improvements attached to trust or restricted land, where the decedent owns an interest in both the permanent improvement and underlying trust or restricted land.

The changes regarding purchase at probate specify when an heir or surviving spouse's interest may be purchased at probate without his or her consent, generally restricting when such purchases without consent may be made. First, this interim final rule states that a purchase without consent at probate may be made only if the decedent's interest was less than 5 percent of the entire undivided interests in the parcel, which will be true in fewer cases than if the measurement were whether the interest passing to the heir is less than 5 percent of the entire undivided interest in the parcel. Second, this interim final rule restricts who may purchase without consent to the Secretary when purchasing the interest under the Indian Land Consolidation program on behalf of the Tribe with jurisdiction over the parcel, and the Tribe itself, in those cases in which the heir or surviving spouse is not a member or eligible to be a member of the Tribe.

(1) This rule will not have an effect of \$100 million or more on the economy or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. This rule will have no effect on the economy because it merely updates the regulations to reflect changes in ILCA/AIPRA made by Congress.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency because the Department is the only agency with authority for handling Indian trust management issues related to probate. This rule does not affect the jurisdiction of Tribal and State courts over permanent improvements.

(3) This rule does not involve entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The revisions have no budgetary effects and do not affect the rights or obligations of any recipients.

(4) These regulatory changes directly implement statutory provisions and do not raise novel legal or policy issues.

Overall, the impact of the rule is confined primarily to the Federal Government, individual Indians, and Tribes, and does not impose a compliance burden on the economy generally. Accordingly, this rule is not a “significant regulatory action” from an economic standpoint, nor does it otherwise create any inconsistencies, materially alter any budgetary impacts, or raise novel legal or policy issues.

#### B. Regulatory Flexibility Act

The Department of the Interior certifies that this document 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.*). It does not change current funding requirements or regulate small entities.

#### C. Small Business Regulatory Enforcement Fairness Act

This interim final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. Because this rule is limited to the probate of Indian trust estates, land, and assets within the United States and within Tribal communities, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

#### D. Unfunded Mandates Reform Act

This interim final 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)

Under the criteria in Executive Order 12630, this interim final rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable “taking.”

A takings implication assessment is not required.

#### *F. Federalism (E.O. 13132)*

Under the criteria in Executive Order 13132, this interim final rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule implements a statutory change, in Public Law 110-453, which establishes a Federal rule of descent and a presumption for interpretation of wills with regard to permanent improvements on trust or restricted land owned by a decedent. This Federal rule of descent and presumption for interpretation of wills will override any State rule of descent or presumption; however, the State (through the county courts) will continue to have jurisdiction to order the distribution of non-trust permanent improvements (in the absence of Tribal jurisdiction).

Because the rule does not affect the Federal government's relationship to the States or the balance of power and responsibilities among various levels of government, it will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

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

This interim final rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

#### *H. Consultation With Indian Tribes (E.O. 13175)*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments," Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on Federally recognized Indian Tribes and Indian trust assets and have identified potential effects. The Department engaged Tribal government representatives throughout development of the final rule that is being amended by this interim final rule. During those consultations, Tribal representatives requested one of the changes that Congress passed and that this interim final rule implements, specifically, that the consent requirements for purchase at probate be measured with reference to the

decedent's ownership in the parcel, rather than with reference to the interest passing to the heir. Additional Tribal consultation regarding this rule is not required because it merely updates the regulations to reflect changes in ILCA/AIPRA made by Congress, amends internal agency procedures and makes minor technical changes.

#### *I. Paperwork Reduction Act*

OMB Control No. 1076-0169 currently authorizes the collections of information contained in 25 CFR part 15. OMB Control No. 1076-0169 authorizes 1,037,433 burden hours. This interim final rule clarifies an information collection requirement in section 15.203. This section requires Tribes to provide "any information" that BIA requires or requests to complete the probate file, and lists, as examples, a few specific items of information may be required or requested. The interim final rule adds to the specific items of information that may be required or requested a copy of the Tribal probate order, where one exists. This information collection requirement does not add to the number of responses, respondents, or type of information collected, and the time required to collect these additional items is covered by the 1,037,433 burden hours authorized under OMB Control No. 1076-0169. As such, a new submission under the Paperwork Reduction Act is not required. If you have comments on this collection, please submit your comments to the person identified in the **ADDRESSES** section of this notice.

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

This interim final rule does not constitute a major Federal action significantly affecting the quality of the human environment.

#### *K. Information Quality Act*

In developing this interim final rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106-554).

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

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

#### *M. Clarity of This Regulation*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain

language. This means that each rule we publish must:

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

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

#### *N. Public Availability of Comments*

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

#### *O. Determination To Issue an Interim Final Rule With Immediate Effective Date*

This rule is being published as an interim final rule with request for comment, and without prior notice and comment, under 5 U.S.C. 553(b)(A) and (B). Under section 553(b)(A), rules of agency procedure or practice, such as the clarification concerning evidence the agency must provide, do not require a notice of proposed rulemaking.

Under section 553(b)(B), the Department for good cause finds that prior notice and comment are unnecessary because this rule amends the existing rule to conform with statutory changes and eliminates inconsistencies between the Department's probate regulations and ILCA/AIPRA as amended by Public Law 110-453. Prior notice and comment are also unnecessary with respect to the balance of the changes effected by this rule because they are minor technical amendments.

Under 5 U.S.C. 553(d)(3), the Department for good cause finds that this rule should be made effective upon publication in the **Federal Register**, rather than after the usual 30-day

period. This finding is based on the reasons explained above.

We have requested comments on this interim final rule. We will review any comments received and, by a future publication in the **Federal Register**, address any comments received and confirm the interim final rule with or without change or initiate a proposed rulemaking.

**List of Subjects**

*25 CFR Part 15*

Estates, Indians—law.

*43 CFR Part 4*

Administrative practice and procedure, Claims, Indians, Lawyers.

*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 chapter 1 of title 25 and subtitle A of title 43 of the Code of Federal Regulations as follows.

**TITLE 25—INDIANS**

**Chapter 1—Bureau of Indian Affairs, Department of the Interior**

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

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

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

■ 2. Revise § 15.1(a) to read as follows:

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

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

\* \* \* \* \*

■ 3. In § 15.2, revise the definition of “Summary probate proceeding” and revise the definition of “You or I” to read as follows:

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

\* \* \* \* \*

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

\* \* \* \* \*

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

■ 4. Revise § 15.10 to read as follows:

**§ 15.10 What assets will the Secretary probate?**

(a) We will probate only the trust or restricted land, or trust personalty owned by the decedent at the time of death.

(b) We will not probate the following property:

(1) Real or personal property other than trust or restricted land or trust personalty owned by the decedent at the time of death;

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

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

(c) We will probate that part of the lands and assets owned by a deceased member of the Five Civilized Tribes or Osage Nation who owned a trust interest in land or a restricted interest in land derived from an individual Indian who was a member of a Tribe other than the Five Civilized Tribes or Osage Nation.

■ 5. In § 15.12, revise paragraph (a) to read as follows:

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

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

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

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

\* \* \* \* \*

■ 6. Revise § 15.202(e) to read as follows:

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

\* \* \* \* \*

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

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

\* \* \* \* \*

■ 7. Revise § 15.203 to read as follows:

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

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

**TITLE 43—PUBLIC LANDS: INTERIOR**

**PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES**

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

**Authority:** 5 U.S.C. 301, 503–504; 25 U.S.C. 9, 372–74, 410, 2201 *et seq.*; 43 U.S.C. 1201, 1457; Pub. L. 99–264, 100 Stat. 61, as amended.

■ 9. Revise § 4.320 to read as follows:

**§ 4.320 Who may appeal a judge’s decision or order?**

Any interested party has a right to appeal to the Board if he or she is adversely affected by a decision or order of a judge under part 30 of this subtitle:

- (a) On a petition for rehearing;
- (b) On a petition for reopening;
- (c) Regarding purchase of interests in a deceased Indian’s estate; or
- (d) Regarding modification of the inventory of an estate.

■ 10. Revise § 4.324 to read as follows:

**§ 4.324 How is the record on appeal prepared?**

(a) On receiving a copy of the notice of appeal, the judge whose decision is being appealed must notify:

- (1) The agency concerned; and
- (2) The LTRO where the original record was filed under § 30.233 of this subtitle.

(b) If a transcript of the hearing was not prepared, the judge must have a transcript prepared and forwarded to the LTRO within 30 days after receiving a copy of the notice of appeal. The LTRO must include the original transcript in the record.

(c) Within 30 days of the receipt of the transcript, the LTRO must do the following:

- (1) Prepare a table of contents for the record;
- (2) Make two complete copies of the original record, including the transcript and table of contents;

- (3) Certify that the record is complete;
- (4) Forward the certified original record, together with the table of contents, to the Board by certified mail or other service with delivery confirmation; and
- (5) Send one copy of the complete record to the agency.
- (d) While the appeal is pending, the copies of the record will be available for inspection at the LTRO and the agency.
- (e) Any party may file an objection to the record. The party must file his or her objection with the Board within 15 days after receiving the notice of docketing under § 4.325.

- (f) For any of the following appeals, the judge must prepare an administrative record for the decision and a table of contents for the record and must forward them to the Board:
  - (1) An interlocutory appeal under § 4.28;
  - (2) An appeal from a decision under §§ 30.126 or 30.127 regarding modification of an inventory of an estate; or
  - (3) An appeal from a decision under § 30.124 determining that a person for whom a probate proceeding is sought to be opened is not deceased.

**PART 30—INDIAN PROBATE HEARINGS PROCEDURES**

- 11. 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.
- 12. Revise § 30.100(a) to read as follows:
 

**§ 30.100 How do I use this part?**

  - (a) The following table is a guide to the relevant contents of this part by subject matter.

| For provisions relating to . . .  | consult . . .                                 |
|---|---|
| (1) All proceedings in part 30  | §§ 30.100 through 30.102.                     |
| (2) Claims against probate estate   | §§ 30.140 through 30.148.                     |
| (3) Commencement of probate   | §§ 30.110 through 30.115.                     |
| (4) Consolidation of interests  | §§ 30.150 through 30.153.                     |
| (5) Formal probate proceedings before an administrative law judge or Indian probate judge                           | §§ 30.210 through 30.246.                     |
| (6) Probate of estates of Indians who die possessed of trust or restricted property                                 | All sections except §§ 30.260 through 30.274. |
| (7) Purchases at probate  | §§ 30.160 through 30.175.                     |
| (8) Renunciation of interests   | §§ 30.180 through 30.188.                     |
| (9) Summary probate proceedings before an attorney decision maker   | §§ 30.200 through 30.207.                     |
| (10) Tribal purchase of certain property interests of decedents under special laws applicable to particular Tribes. | §§ 30.260 through 30.274.                     |

- \* \* \* \* \*
- 13. In § 30.101, add in alphabetical order a new definition of “Covered permanent improvement” and revise the definitions of “Summary probate proceeding” and “You or I” to read as follows:

**§ 30.101 What definitions do I need to know?**

*Covered permanent improvement* means a permanent improvement (including an interest in such an improvement) that is:

- (1) Owned by the decedent at the time of death; and
- (2) Attached to a parcel of trust or restricted land that is also, in whole or in part, owned by the decedent at the time of death.

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

*You or I* means an interested party, as defined herein, with an interest in the decedent’s estate unless a specific section states otherwise.

- 14. Revise § 30.102 to read as follows:

**§ 30.102 What assets will the Secretary probate?**

- (a) We will probate only the trust or restricted land or trust personalty owned by the decedent at the time of death.
- (b) We will not probate the following property:
  - (1) Real or personal property other than trust or restricted land or trust personalty owned by the decedent at the time of death;
  - (2) Restricted land derived from allotments made to members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma; and
  - (3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests owned by Osage decedents.
- (c) We will probate that part of the lands and assets owned by a deceased member of the Five Civilized Tribes or Osage Nation who owned either a trust interest in land or a restricted interest in land derived from an individual Indian who was a member of a Tribe other than the Five Civilized Tribes or the Osage Nation.

- 15. Revise § 30.110 to read as follows:

**§ 30.110 When does OHA commence a probate case?**

OHA commences probate of an estate when OHA receives a probate file from the agency.

- 16. In § 30.128, revise the introductory text and paragraph (a) to read as follows:

**§ 30.128 What happens if an error in BIA’s estate inventory is alleged?**

This section applies when, during a probate proceeding, an interested party alleges that the estate inventory prepared by BIA is inaccurate and should be corrected.

- (a) Alleged inaccuracies may include, but are not limited to, the following:
  - (1) Trust property should be removed from the inventory because the decedent executed a gift deed or gift deed application during the decedent’s lifetime, and BIA had not, as of the time of death, determined whether to approve the gift deed or gift deed application;
  - (2) Trust property should be removed from the inventory because a deed through which the decedent acquired the property is invalid;
  - (3) Trust property should be added to the inventory; and
  - (4) Trust property included in the inventory is described improperly, although an erroneous recitation of acreage alone is not considered an improper description.

\* \* \* \* \*

■ 17. Revise § 30.140 introductory text to read as follows:

**§ 30.140 Where and when may I file a claim against the probate estate?**

You may file a claim against the estate of an Indian with BIA or, after the agency transfers the probate file to OHA, with OHA.

\* \* \* \* \*

■ 18. Revise § 30.142 to read as follows:

**§ 30.142 Will a judge authorize payment of a claim from the estate if the decedent's non-trust property was or is available?**

The judge will not authorize payment of a claim from the estate if the judge determines that the decedent's non-trust property was or is available to pay the claim. This provision does not apply to a claim that is secured by trust or restricted property.

■ 19. Revise § 30.143(b)(1) to read as follows:

**§ 30.143 Are there any categories of claims that will not be allowed?**

\* \* \* \* \*

(b) \* \* \*

(1) Has existed for such a period as to be barred by the applicable statute of limitations at the date of decedent's death;

\* \* \* \* \*

■ 20. In § 30.151, revise the introductory text and paragraphs (a) and (b) to read as follows:

**§ 30.151 May the devisees or eligible heirs in a probate proceeding consolidate their interests?**

The devisees or eligible heirs may consolidate interests in trust property already owned by the devisees or heirs or in property from the inventory of the decedent's estate, or both.

(a) A judge may approve a written agreement among devisees or eligible heirs in a probate case to consolidate the interests of a decedent's devisees or eligible heirs.

(1) To accomplish a consolidation, the agreement may include conveyances among decedent's devisees or eligible heirs of:

- (i) Interests in trust or restricted land in the decedent's trust inventory;
- (ii) Interests of the devisees or eligible heirs in trust or restricted land which are not part of the decedent's trust inventory; and

(iii) Interests of the decedent, the devisees, or eligible heirs in any covered permanent improvements attached to a parcel of trust or restricted land in the decedent's trust inventory.

(2) The parties must offer evidence sufficient to satisfy the judge of the percentage of ownership held and offered by a party.

(3) If the decedent's devisees or eligible heirs enter into an agreement, the parties to the agreement are not required to comply with the Secretary's rules and requirements otherwise applicable to conveyances by deed.

(b) If the judge approves an agreement, the judge will issue an order distributing the estate in accordance with the agreement.

\* \* \* \* \*

■ 21. In § 30.160, revise the introductory text to read as follows:

**§ 30.160 What may be purchased at probate?**

An eligible purchaser may purchase, during the probate, all or part of the estate of a person who died on or after June 20, 2006.

\* \* \* \* \*

■ 22. Revise § 30.163 to read as follows:

**§ 30.163 Is consent required for a purchase at probate?**

(a) Except as provided in paragraphs (b) and (c) of this section, to purchase an interest in trust or restricted land at probate you must have the consent of:

(1) The heirs or devisees of such interest; and

(2) Any surviving spouse who receives a life estate under 25 U.S.C. 2206(a)(2)(A) or (D).

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

(1) The interest will pass by intestate succession;

(2) The judge determines based on our 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; and

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

(c) We may purchase an interest in trust or restricted land on behalf of the Tribe with jurisdiction over the parcel containing the interest. If we do so, we must obtain consent under paragraph (a) of this section, unless the conditions in paragraphs (b)(1) through (3) of this section are met.

■ 23. Revise § 30.167(a) to read as follows:

**§ 30.167 How does OHA decide whether to approve a purchase at probate?**

(a) OHA will approve a purchase at probate if an eligible purchaser submits a bid in an amount equal to or greater than the market value of the interest.

(1) In cases where the sale of the interest does not require consent under § 30.163(b), OHA will sell the interest to the eligible purchaser.

(2) In all other cases, OHA will sell the interest to the eligible purchaser selected by the applicable heir, devisee, or surviving spouse.

\* \* \* \* \*

■ 24. Revise § 30.170(c) to read as follows:

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

\* \* \* \* \*

(c) If the objection is not timely filed, the judge will issue an order denying the request for review as untimely and will furnish copies of the order to the interested parties and the agencies. If you disagree with the decision of the judge as to whether your objection was timely filed, you may file a petition for rehearing under § 30.238 after the judge issues a decision under § 30.235.

**§§ 30.236 through 30.245 [Redesignated as §§ 30.237 through 30.246]**

■ 25a. Redesignate §§ 30.236 through 30.245 as §§ 30.237 through 30.246.

■ 25b. Add § 30.236 to read as follows:

**§ 30.236 How are covered permanent improvements treated?**

(a) In an intestate case, under the Act, an interest in a covered permanent improvement attached to a parcel of trust or restricted land is treated as shown in the following table:

|  |  |
|--|--|
| If . . .   | then the covered permanent improvement passes to . . .                 |
| (1) A Tribal probate code approved under 25 CFR part 18 specifies how the covered permanent improvement will be handled.             | the person(s) designated in the Tribal probate code to receive it.     |
| (2) A consolidation agreement approved under subpart F of this part specifies how the covered permanent improvement will be handled. | the person(s) designated in the consolidation agreement to receive it. |



|   |   |
|---|---|
| If . . .  | then the covered permanent improvement passes to . . .                                  |
| (3) There is neither an approved Tribal probate code nor an approved consolidation agreement that specifies how the covered permanent improvement will be handled, but there is a renunciation of the trust or restricted interest in the parcel under subpart H of this part.  | the recipient of the trust or restricted interest in the parcel under the renunciation. |
| (4) There is neither an approved Tribal probate code nor an approved consolidation agreement that specifies how the covered permanent improvement will be handled, and there is no renunciation of the trust or restricted interest in the parcel under subpart H of this part. | each eligible heir to whom the trust or restricted interest in the parcel descends.     |

(b) In a testate case, under the Act, an interest in a covered permanent improvement attached to a parcel of trust or restricted land is treated as shown in the following table:

|  |   |
|--|---|
| If . . .   | then the covered permanent improvement passes to . . .  |
| (1) The will expressly states how the covered permanent improvement will be handled.         | the person(s) designated in the will to receive it.   |
| (2) The will does not expressly state how the covered permanent improvement will be handled. | the person(s) designated in the will to receive the trust or restricted interest in the parcel. |

(c) The provisions of the Act apply to a covered permanent improvement:

(1) Even though it is not held in trust; and

(2) Without altering or otherwise affecting its non-trust status.

(d) The judge's decision will specifically direct the distribution only of the decedent's trust or restricted property, and not any non-trust permanent improvement attached to a parcel of trust or restricted land. However, the judge:

(1) Will include in the decision a general statement of the substantive law of descent or devise of permanent improvements; and

(2) Can approve a consolidation agreement under subpart F of this part that includes a covered permanent improvement.

■ 26. Revise newly redesignated § 30.238(a) to read as follows:

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

(a) If you are adversely affected by the decision, you may file with the judge a written petition for rehearing within 30 days after the date on which the decision was mailed under § 30.237.

\* \* \* \*

**§ 30.243 [Amended]**

■ 27. In newly redesignated § 30.243, redesignate the second paragraph (a)(2) as paragraph (a)(3).

■ 28. Revise § 30.262(a)(1) to read as follows:

**§ 30.262 When may a Tribe exercise its statutory option to purchase?**

(a) \* \* \*

(1) Within 60 days after mailing of the probate decision unless a petition for

rehearing has been filed under § 30.238 or a demand for hearing has been filed under § 30.268; or

\* \* \* \*

■ 29. Revise § 30.266(b)(3) to read as follows:

**§ 30.266 When is a final decision issued?**

\* \* \* \*

(b) \* \* \*

(3) A copy of the probate decision, together with a copy of the valuation report, must be distributed to all interested parties under § 30.237.

Dated: December 13, 2010.

**Larry Echo Hawk,**

*Assistant Secretary—Indian Affairs.*

Dated: December 20, 2010.

**Rhea S. Suh,**

*Assistant Secretary—Policy, Management and Budget.*

[FR Doc. 2011-2896 Filed 2-9-11; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 61**

[Docket ID: FEMA-2010-0021]

RIN 1660-AA70

**National Flood Insurance Program, Policy Wording Correction**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** In a Notice of Proposed Rulemaking, the Federal Emergency

Management Agency (FEMA) proposed a technical correction to the FEMA, Federal Insurance and Mitigation Administration, Standard Flood Insurance Policy regulations. In order to increase the clarity of one of the provisions of the Standard Flood Insurance Policy, FEMA is adding two unintentionally omitted words in this final rule.

**DATES:** This rule is effective March 14, 2011.

**ADDRESSES:** The Notice of Proposed Rulemaking is part of Docket ID: FEMA-2010-0021 and is available online by going to <http://www.regulations.gov>, inserting FEMA-2010-0021 in the "Keyword" box, and then clicking "Search". The Docket is also available for inspection or copying at FEMA, 500 C Street, SW., Room 840, Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Edward L. Connor, Acting Federal Insurance and Mitigation Administrator, DHS/FEMA, 1800 South Bell Street, Arlington, VA 20598-3010. Phone: (202) 646-3429. Facsimile: (202) 646-7970. E-mail: [Edward.Connor@dhs.gov](mailto:Edward.Connor@dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background and Purpose**

Under the authority of sections 1304 and 1345 of the National Flood Insurance Act of 1968, Public Law 90-448, 82 Stat. 574, as amended (42 U.S.C. 4011, 4081), the Federal Emergency Management Agency (FEMA) provides insurance protection against flood damage to homeowners, businesses, and others by means of the National Flood Insurance Program (NFIP). The sale of flood insurance is largely implemented by private insurance companies that participate in the NFIP Write-Your-Own