

# Supporting Statement for Paperwork Reduction Act Submissions

## 25 CFR 18: Tribal Probate Codes

OMB Control Number 1076-0168

NOTE: The Department submitted this request for a new collection in conjunction with the August 8, 2008 publication in the Federal Register of the proposed rule (71 FR 45173). OMB filed comments and withheld approval of the information collection, directing that, prior to publication of the final rule, the Department provide all comments on the recordkeeping and reporting requirements in the proposed rule, the agency response to these comments, and a summary of any changes to the information collection. A summary of the comments and responses are in the response to no. 8, below.

**Terms of Clearance:** None.

### A. Justification

#### 1. What circumstances make the collection necessary? Include copies of requirements, legal or regulatory.

The Department is finalizing a new 25 CFR part 18 to implement the provisions of the Indian Land Consolidation Act (ILCA), as amended by the American Indian Probate Reform Act of 2004 (AIPRA). ILCA, as amended by AIRPA, is attached. This statute provides that any tribal probate code, any amendment to a tribal probate code, and any free-standing single heir rule are subject to the approval of the Secretary. This statute also establishes the basics of review and approval of tribal probate codes.

As sovereignties, federally recognized tribes have the right to establish their own probate codes. When those probate codes govern the descent and distribution of trust or restricted property, they must be approved by the Secretary of the Department of the Interior. Within the Department of the Interior, various Offices of Hearings and Appeals (OHA) handle the probates of Indians who die owning trust or restricted property, to adjudicate who should receive the trust and restricted property. In conducting these probates, OHA may follow the tribe's probate code or free-standing single heir rule, if the Secretary has approved the code or rule. Following tribally enacted codes and rules furthers tribal self-determination, while Secretarial approval ensures that the codes and rules comply with federal laws.

#### 2. How, by whom, and for what purpose is the information to be used?

This new CFR part includes the following information collection request: Sections 18.105, 202, and 302 provide that the tribe must submit its tribal probate code, tribal probate code amendment, or free-standing single heir rule, respectively, for Secretarial approval, in order for them to become effective. Tribes submit their tribal probate codes in whatever format they choose to the Secretary for approval. The Secretary reviews the tribal probate code to determine whether it is consistent with Federal law and promotes the policies set forth in section 102 of the Indian Land Consolidation Act Amendments of 2000, as required by 25 U.S.C. § 2205(b)(2)(C). Once the tribal probate code, amendment, or single heir rule is approved by the Secretary, the code, amendment, or

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rule becomes effective, and will govern distribution of Indian decedents who own trust or restricted property and who die on or after the date of effectiveness.

**3. How have you considered using electronic technology to reduce the burden of the collection on the public? Note, you must address compliance with GPEA (Government Paperwork Elimination Act), barriers such as confidentiality of information, too small a collection to warrant expense, inability of public to access electronically, etc.**

During December 2001, BIA was forced to disconnect from the internet by a court order issued by the judge in the Cobell litigation. A recent court order, issued in May 2008, allowed reconnection to the internet. BIA is in the process of reconnecting and will examine additional ways to implement GPEA when connection is complete.

For this collection, we use limited automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

This information is not duplicated in any other data collection. The information required is unique to each tribe and must be updated to ensure the tribal probate code remains effective.

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

The BIA consulted with the tribes and through various tribal-member non-governmental organizations to determine what information collection was necessary to ensure the fair and equitable administration of Indian decedents' estates. Through this consultation, the information collection burden has been minimized.

Tribes have the choice to prepare and maintain a tribal probate code or have their members' estates be distributed according to the uniform probate code established by AIPRA. When tribes choose to prepare a tribal probate code, the tribe may only make the code effective by submitting it for Secretarial approval under 25 USC § 2205.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

If this information collection is not conducted, tribes will not have the option to establish how their members' estates will be distributed in the absence of a will because, by law, the code may not be effective without Secretarial approval. The regulation requires

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submission only upon adoption of the code or amendment to the code, to ensure that all changes are effective, pursuant to 25 USC § 2205.

**7. Explain any special circumstances that would cause an information collection to be conducted in certain manners. Are there any special circumstances that require exceptions to 5 CFR 1320.5(d)(2)? Describe the frequency of reporting, the speed of reporting, the copies required, the use of statistics, confidential information, or proprietary trade secrets.**

Part 18 does not require any exceptions to 5 CFR 1320.5(d)(2), as explained below.

- *Requiring respondents to report information to the agency more often than quarterly*—The only circumstance which would require tribes to provide their tribal probate code more often than quarterly would be if the tribe passed a new tribal probate code and amended the code within a quarter, or for previously approved tribal probate codes, amended the code more than once in a quarter.
- *Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it*—No provision requires a respondent to prepare a written response to a collection in fewer than 30 days after receipt of it.
- *Requiring respondents to submit more than an original and two copies of any document*—No provision requires any respondent to submit more than an original and two copies of any document.
- *Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years*—No provision requires any respondent to retain records for more than three years.
- *In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study*—No provision requires a statistical survey.
- *Requiring the use of a statistical data classification that has not been reviewed and approved by OMB*—No provision requires use of a statistical data classification.
- *That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use*—No provision includes a pledge of confidentiality.
- *Requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law*—No provision requires respondents to submit proprietary trade secrets or other confidential information.

**8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to**

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**OMB. Summarize public comments received in response to that notice [and in response to the PRA statement associated with the collection over the past three years] and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden. [In other words, address the 60-day FR notice and summarize comments.] Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed or reported [List names, titles, addresses, and phone numbers of persons contacted.]**

The Department published notice soliciting comments on the information collection at:

- 71 Fed. Reg. 45173 (August 8, 2006) (comments due October 10, 2006)
- 71 Fed. Reg. 64181 (November 1, 2006) (reopened comment period to January 2, 2007)
- 71 Fed. Reg. 3377 (January 25, 2007) (reopened comment period again to March 12, 2007).

The Department received two oral comments at tribal consultations regarding the proposed information collection requests. These comments asked generally what the Paperwork Reduction Act section of the proposed rule addressed, and what the information collection request figures represented. Representatives of the Department responded at the tribal consultations by summarizing the Paperwork Reduction Act's requirement that the Department: (1) identify any instances where the regulation requests that members of the public provide information, (2) explain the need for that information collection request, and (3) summarize how long it will take members of the public to provide the information. The Department representatives highlighted the fact that member of the public are welcome to comment on the information collection requests, including the Department's need for the information and estimates for how long it will take to provide the information.

No changes to the information collection requests were made as a result of these comments; however, administrative changes have been made to update section numbers to reflect updated section numbers in the final version of 25 CFR 18. The final version will be published in the Federal Register with a notice that the information collections will not become effective until and unless OMB approves them.

#### **9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

The respondents will not receive any payment or gift in connection with the information collection requirements.

#### **10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

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There is no assurance of confidentiality provided to respondents in connection with the information collection requirements.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

The information collection does not include any questions of a sensitive nature.

**12. Provide estimates of the hour burden collection of information.**

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and then aggregate the hour burdens.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here.**

Attachment A, Table 1 provides estimates of the hour burden collection of information on the public.

**13. Provide an estimate of the total annual [non-hour] cost burden to respondents or recordkeepers resulting from the collection of information. Do not include the cost of any hour burden.**

The estimated total annual cost burden to respondents or record keepers for capital and start-up cost components (annualized over the expected useful life) for this information collection is zero. The information collection will not require the purchase of any capital equipment nor create any start-up costs because no equipment is involved with the administration of Indian decedents' estates. Any computers and software used to complete this information collection are part of the respondents' customary and usual business practices and, therefore, are not included in the estimate.

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**14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 on a single table.**

Attachment A, Table 2 provides estimates of the hour burden collection of information on the Federal government. The estimated total annualized cost burden to the Federal government with respect to operations and maintenance costs such as equipment, overhead, and printing is zero.

**15. Explain the reasons for any program changes or adjustments.**

Overall, the hourly burden on the public increased by 50. This increase is a program change resulting from a new regulatory requirement.

**16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

The Department does not plan to publish the collection of information.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

The Department intends to display the expiration date with the OMB Control Number.

**18. Explain each exception to the certification statement identified in 5 CFR 1320.9 (hourly and cost burden) and 5 CFR 1320.8(b)(3) (the questions we ask commenters to address).**

The certification statement does not include any exceptions.

Attachment A: Estimated Burden Hours

Attachment B: ILCA, as amended by AIPRA