

Supporting Statement for Paperwork Reduction Act Submissions
25 CFR 15: Probate of Indian Estates
except for Members of Osage and Five Civilized Tribes
OMB Control Number 1076-0169

NOTE 1: The Department requests a new collection number due to the extent of changes contained in this submission. Additionally, this regulation (25 CFR Part 15) was amended in March 2005; however, since DOI did not circulate it through normal BIA channels, it appears that no Paperwork Reduction Act (PRA) package for these revisions was submitted under OMB Control Number 1076-0156 or otherwise. As such, the section cross-references in Attachment A of the Supporting Statement refer to pre-March 2005 sections.

NOTE 2: The Department submitted this request for a new collection in conjunction with the August 8, 2006 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 proposing to revise 25 CFR Part 15 to further fulfill the Secretary of the Department of the Interior's fiduciary responsibilities to federally recognized tribes and individual Indians and to meet the trust management policies articulated by Congress in the Indian Land Consolidation Act (ILCA), as amended by the American Indian Probate Reform Act of 2004 (AIPRA). ILCA, as amended by AIRPA, is attached. The Secretary has sole authority to probate estates of Indians under 25 U.S.C. § 372; Part 15 describes the Bureau of Indian Affairs (BIA) procedures before passing the file on to the Office of Hearing and Appeals (OHA) for disposition. The information collections included in Part 15 will allow the Secretary to obtain the information necessary to compile and make as complete as necessary each probate file for individual Indians before disposition.

Attachment B: ILCA, as amended by AIPRA

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

The parties that submit information under the Part 15 are individual Indians and any persons having claims against an Indian decedent's estate. Sections of the rule that contain information collection requirements are summarized below.

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The information provided through information collection requirements is used by the BIA to identify heirs and prepare the probate file for adjudication by OHA. OHA uses the information BIA provides in the probate file to determine how the assets of a decedent's estate should be distributed at probate. OHA distributes those assets in accordance with 43 CFR 30. The information is particularly used by BIA to start the probate process, prepare a probate package for OHA review, and compile claims. OHA then adjudicates the probate and disburses the decedent's assets.

Part 15 includes information collection requests from the public in sections 15.9, 15.104, 15.105, 15.203, 15.301, 15.302, and 15.305. No forms are associated with these items of information.

- Section 15.9 requires a testator who is self-proving his or her will to file a sworn statement establishing that the document is their last will and testament, that he or she declared the document to be their last will and testament and signed in the presence of two witnesses, that the will was read and explained before he or she signed it, that the will clearly and accurately reflects his or her interests, that he or she willingly made and executed the will as their free and voluntary act. This section also requires that two witnesses sign sworn statements that the testator declared the document to be his or her will, signed the document in the presence of the witness, was not acting under duress, menace, fraud, or undue influence of any person, and in the witness's opinion, is mentally capable of disposing his or her estate by will. OHA will use the affidavits in place of taking the testimony of witnesses when probating the estate.
- Section 15.104 adds a requirement for persons unable to provide a death certificate to provide as much as they know about the deceased. If no death certificate exists, they must provide this information in an affidavit. This information will ensure that BIA has the information it needs regarding the identity of the deceased to collect documents for the probate file. The revisions require persons unable to provide a death certificate to provide as much as they know about the deceased, including: the state, city, reservation, location, date and cause of death, the last known address of the deceased, names and addresses of others who may have information about the deceased. If no death certificate exists, they must provide this information in an affidavit.
- Section 15.105 lists the items that BIA needs to prepare a probate file. While BIA actively searches for this information, the public is the most likely respondent for this information. The rule deletes the requirement for a birth certificate of the deceased, but adds several other items of information. The new items to be provided to BIA for preparation of a probate file include:
 - Place of enrollment and tribal enrollment or census number of the decedent and potential heirs and beneficiaries (see § 15.105(c));

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- Any sworn statements regarding the decedent's family, including any statements of paternity or maternity (see § 15.105(e));
 - Any statements renouncing an interest in the estate including identification of the person or entity to whom the interest is renounced, if any (see § 15.105(f));
 - A list of known claims by creditors and their addresses, including copies of any court judgments (see § 15.105(g));
 - Adoption and guardianship papers concerning decedent's potential heirs or beneficiaries (see § 15.105(h)(3)); and
 - Orders requiring payment of spousal support (see § 15.105(h)(5)).
- Section 15.203 states that tribes must provide information related to a probate case that the Secretary requires of them, including enrollment and family history data. Completion of these information collection requests will ensure that the OHA receives the information it needs to probate each estate, allowing OHA meet the needs of trust asset beneficiaries in the most accurate and timely manner possible.
 - Section 15.301 contains the reporting requirement for certain funeral expenses and provisions relating to filing claims against an Indian decedent's estates.
 - Section 15.302 is a simple declaratory statement in the form of an affidavit stating that a creditor has a claim against the estate.
 - Section 15.305 requires that those filing a claim against the estate submit an affidavit under oath of the debt alleged and an itemized statement of the debt, including copies of any documents (such as signed notes, mortgages, account records, billing records, and journal entries) necessary to prove the indebtedness.

Note also that Section 15.202 specifies certain documents that are necessary for a probate file to be considered complete so that BIA can forward the file to the Office of Hearings and Appeals (OHA). These documents will either already be provided by the public as a result of their compliance with Section 15.105, or they are within BIA's possession. The Federal Government, rather than the public, will bear the burden of ensuring that these documents are part of the probate package; therefore, the burden was attributable when first collected. The Bureau fills in a form called the OHA-7 to track the information it pulls together from its files and from the information collected in Section 15.105. Because this form is internal to the Bureau, it does not require clearance as an information collection request.

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

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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 by using the ProTrac system to maintain probate records. A Privacy Act system of records notice related to probate records, BIA-27 BIA ProTrac/Probate Files, maintained in connection with this regulation was published in the Federal Register at 72 Fed. Reg. 8767 (February 27, 2007).

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 the probate of Indian decedents' estates and no similar information is found in any other collection. In keeping with the Paperwork Reduction Act and other statutory requirements, the information collected is the minimum needed for the intended purpose.

- With regard to the information required in the Section 15.9 (affidavits for self-proving wills), the statements required are specific to the testator's intentions with respect to his or her will, and therefore are not available elsewhere.
- With regard to the information required in the Section 15.104 (information to be provided when there is no death certificate) and 15.105 (documents BIA needs to prepare the probate file) this information is not available elsewhere.
- With regard to Sections 15.302 and 305, information on claims for funeral expenses and other expenses are unique to each estate, and therefore is not available elsewhere.
- With regard to Section 15.202, the information in this section that is provided by the public is already required of the public by the Section 15.105, so no new collection is necessary. For the remaining additional documents, BIA will obtain the information from already available sources. For example:
 - BIA will obtain accurate and adequate descriptions of all real property and appurtenances from the Land Title and Records Office (LTRO);
 - BIA will obtain information on all encumbrances on the real property, including leases, from the LTRO;

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- BIA will obtain the fair market value of each real property interest from its Office of Appraisal Services;
 - BIA will identify interests that represent less than 5% of the undivided interest based on LTRO records and other information it receives;
 - BIA will obtain from itself any statements or documents it has released concerning wills, codicils, or revocations;
 - BIA will obtain information regarding disbursements made after the death of an account holder from the Office of Trust Fund Management (OTFM) within BIA's Office of Special Trustee (OST).
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- With regard to the Section 15.203, BIA will request tribal enrollment and family history data from tribes because they are the most accurate and up-to-date source for this information. While the public will provide enrollment information under Section 15.105, this information may not be the most current information available. To ensure that the proper disbursements are made, BIA must obtain the most accurate information possible, which is exclusively maintained by the tribes in their normal course of business. BIA estimates it will take tribes a total of 11,240 hours per year to provide this information.

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

This rule does not affect small businesses or other small entities, as defined by the Small Business Regulatory Enforcement Fairness Act (SBREFA). 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.

The change in information collection requirements most likely to impact tribes would be the requirement to provide tribal enrollment and family data history, where requested, under Section 15.203. Tribes generally have this information readily available, as they generally maintain it in the normal course of business, and likely will not need to provide this information very often. The Department has estimated that each of the 562 tribes will, on the average, provide information on about 10 decedents per year—totaling 5,620 responses. For each of these decedents, BIA may require the tribe to provide enrollment and family history data for heirs and/or devisees of the decedent. The Department estimates that collecting this information for each decedent's estate will average two hours, for a total burden of 11,240 hours per year. The Department obtains all the other information needed for a probate file from other sources to minimize the burden on tribes and has restricted its collection on tribes to that information for which tribes are the exclusive holders of the most accurate and current information.

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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.

The information collection burden cannot be reduced any further without the integrity of the probate Indian decedent's estate being compromised. If BIA is not able to ensure that each of the items of information is present in a probate file, OHA will not be able to accurately capture which assets are part of the estate, and to whom the assets should be distributed. Likewise, if BIA is not able to collect tribal enrollment and family history data from tribes, it will potentially make decisions concerning who are eligible heirs, purchasers, and devisees based on erroneous and/or out-of-date information. Both of these situations could result in erroneous distributions of assets, depriving heirs or devisees of their rightful claim to property. The frequency established by the regulations—once per probate estate—is necessary because each estate contains unique assets.

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.

The one circumstance formerly requiring an exception to 5 CFR 1320.5(d)(2) has been deleted. This circumstance required interested parties to request the probate package to be sent to OHA rather than an attorney decision maker within 20 days. The revised regulations delete this requirement and provide, instead, that all probate packages are sent to OHA for assignment to a deciding official. Final sections of the regulations do 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 revisions may require tribes to report certain information, such as enrollment and family history data, to BIA more often than quarterly; however, each report of information will most likely be with regard to different tribal members, as they will relate to potential heirs and devisees of a specific estate.
- *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.

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- *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. While some sensitive information may be submitted for contribution to a probate file, such information becomes public record when the estate is probated. Additionally, under this regulation, tribes may provide information to the BIA that it received from individual Indians. Tribes are not subject to the Privacy Act.*
- *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 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.]

This information collection is part of the revisions to 25 CFR 15. BIA has consulted with the following person outside the agency to obtain their views on the availability of data, frequency of collection, clarity of instructions, and reporting format, and the data elements to be recorded, disclosed or reported:

Fannie Armstrong
Enrollment Specialist Flandreau-Santee Sioux Tribe
P.O. Box 283
603 West Broad Avenue
Flandreau, South Dakota 57028

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The Department published notices 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 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 members 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 15.

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.

There is no assurance of confidentiality provided to respondents in connection with the information collection requirements. Much of the information requested under this CFR Part is part of the public record (e.g., death certificate) and is related to the decedent and therefore no longer protected by the Privacy Act. With respect to information requested that is related to live people (e.g., heirs, devisees, legatees), the Department complies with the Privacy Act and the applicable system of record notice requirements for Pro-Trac (BIA-27), but does not provide an assurance of confidentiality to the respondents.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are

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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 required by the final rule's provisions may include information of a sensitive nature, including enrollment and family history data. This information is necessary to determine whether heirs and devisees meet the definitions of "eligible heir," "eligible purchaser," and "Indian," under the AIPRA provisions.

- 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.

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include**

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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.

Because this is considered a new collection, we are reporting all hours as a program change—resulting in an increase of 1,037,433 hours. However, this regulation is replacing the current 25 CFR 15, for which there is an existing approved collection under OMB Control Number 1076-1056 for 1,094,514 hours, so the actual change will be a decrease, as described below.

Overall, the hourly burden on the public decreased by 57,081. This decrease is comprised of both program changes and adjustments.

Program Changes

Program changes have been made to the following sections, resulting in a net program change decrease of 18,813 hours. These programmatic changes increase the documents that the public, including tribes, must provide in support of a complete probate package (add expenses). These increases are the result of program changes that are necessary to comply with AIPRA provisions restricting the eligibility of persons to inherit, receive as a devisee, or purchase interests.

Section 15.9	+ 500
Section 15.9	+ 1,000
Section 15.104	+ 5,850
Section 15.105	+26,543.75
Former Section 15.201	- 7,887
Former Section 15.202	- 2,972.2
Section 15.203	+11,240
<u>Section 15.403</u>	<u>-53,087.5</u>
TOTAL	-18,812.95 (~-18,813)

Adjustments

Two adjustments were made, netting -38,268:

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- Adjustment to account for miscalculation in adding hours in last PRA submission: sum was represented as 1,094,513, while the true sum was 1,102,400—requiring an adjustment increase of 7,887.
- Adjustment decreasing hours by 46,155 to reflect six claims per probate (former section 15.303, new section 15.305)

Summary

The total net change in Total Hourly Burden is -57,081 (1,094,513 – 1,037,433). The following provides a breakdown.

1,094,513		Current OMB Inventory Hours as stated in last PRA submission
+ <u>7,887</u>		Adjustment to account for miscalculation to Current OMB Inv. Hours
1,102,400		
- <u>46,155</u>		Adjustment for Section 15.202 to account for 6 creditor claims per probate
1,056,245		
- <u>18,813</u>		Program change decrease
1,037,433		Total Hourly Burden (Annual)

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.

B. Collection of Information Employing Statistical Methods

Statistical methods are not used in this collection.

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Attachment A: Estimated Burden Hours

Attachment B: ILCA, as amended by AIPRA