

1 Supporting Statement A

**Bureau of Indian Affairs
Probate of Indian Estates
(Except for Members of Osage and Five Civilized Tribes)
25 CFR 15**

OMB Control Number 1076-0169

Terms of Clearance: None.

Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

The Secretary has sole authority to probate estates of individual Indians owning trust or restricted property under 25 U.S.C. 372 and 373. 25 CFR 15 describes the Bureau of Indian Affairs (BIA) procedures regarding preparation of the probate file before forwarding the file to the Office of Hearing and Appeals (OHA) for disposition. The information collection allows the Secretary to obtain the information necessary to compile a probate file for deceased individual Indians before disposition.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. Be specific. If this collection is a form or a questionnaire, every question needs to be justified.**

The parties who submit information under 25 CFR 15 are members of the public, which may include: individual Indians, persons having claims against an Indian decedent's estate or other interested parties. Sections of the rule that contain information collection requirements are summarized below.

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 used by BIA to start the probate process, prepare a probate package for OHA, and compile documents including claims and other evidence. Once the probate file is sent to OHA, OHA adjudicates the probate and orders distribution of the decedent's assets.

Part 15 includes information collection requests from the public in sections 15.9, 15.104, 15.105, 15.202, 15.203, 15.301, and 15.305. No forms are associated with these items of information. The purpose of collecting the types of information listed below is to ensure that the BIA has a complete probate file to forward to OHA. OHA needs a probate file and information regarding the decedent to adjudicate the trust estate.

- 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 an estate.
- Section 15.104 adds a requirement for persons to provide a certified copy of a death certificate if one exists. If a certified copy of a death certificate is unable to be provided, persons must provide an affidavit that includes the following information: 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. This information ensures that BIA has the information it needs regarding the identity of the deceased to collect documents for the probate file.
- 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 to provide this information.
- Section 15.202 provides a list of items that BIA must include in the probate file. Some of the information under this provision may be provided by potential heirs, devisees or tribes and may include the following types of information: whether a person meets the definition of "Indian" under AIPRA, enrollment information, whether heirs are within two degrees of consanguinity of an "Indian" as defined by AIPRA, any copies of wills or codicils or revocations, and any statement of renouncing an interest. The public or Tribes may be the most likely respondent to provide this type of information.
- Section 15.203 states that tribes must provide information related to a probate case that the Secretary requires of them, and may include: enrollment and family history data, or certain property title documents and a copy of Tribal probate orders if they exist. Completion of these information collection requests will ensure that the OHA receives the information it needs to probate each estate, allowing OHA to meet the needs of trust asset beneficiaries in the most accurate and timely manner possible.

- Section 15.301 contains the process for receiving funds from the decedent's IIM account for funeral services.
- Section 15.305 sets forth the requirements for filing a claim against the estate. Information collected under this provision includes: submitting an itemized statement of the claim, including copies of any supporting documents such as signed notes, account records, billing records, and journal entries. The itemized statement must also include: (1) The date and amount of the original debt;(2) The dates, amounts, and identity of the payer for any payments made; (3) The dates, amounts, product or service, and identity of any person making charges on the account; (4) The balance remaining on the debt on the date of the decedent's death; and (5) Any evidence that the decedent disputed the amount of the claim.

An affidavit must also be submitted under this provision that verifies the balance due and states whether: (1) Parties other than the decedent are responsible for any portion of the debt alleged; (2) Any known or claimed offsets to the alleged debt exist; (3) The creditor or anyone on behalf of the creditor has filed a claim or sought reimbursement against the decedent's non-trust or non-restricted property in any other judicial or quasi-judicial proceeding, and the status of such action; and (4) The creditor or anyone on behalf of the creditor has filed a claim or sought reimbursement against the decedent's trust or restricted property in any other judicial or quasi-judicial proceeding, and the status of such action.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden and specifically how this collection meets GPEA requirements.

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 Trust Asset and Accounting Management System (TAAMS) and Trust Fund Accounting System (TFAS) to maintain records relevant to probate. There are several Privacy Act system of records notices related to probate records and include: BIA-27 BIA ProTrac/Probate Files, [72 FR 8767]; BIA-04 Indian Land Records [72 FR 8772]; and BIA-25 Integrated Records Management System (IRMS) [72 FR 8769]. These notices were published in the Federal Register on February 27, 2007. Another Privacy Act system of records relevant to probate: OS-02, Individual Indian Monies (IIM) Trust Funds [73 FR 77824] was published in the Federal Register on December 19, 2008.

The Division of Probate and Estate Services has no specific form to collect the information for the probate file. Information regarding the collection of information for putting together a probate package is written down on worksheets when interviews are conducted with

interested parties. There are times when the information is submitted via email.

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' trust 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 regarding a certified copy of a death certificate or affidavit 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 15.301, information regarding a request for funds out of the decedent's IIM account to pay for funeral expenses is unique to each estate, and therefore is not available elsewhere.
- With regard to Sections 15.305, information regarding claims 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 or tribes is not readily available elsewhere and the public and tribes are the most likely respondents to have this information. For remaining additional documents, BIA obtains information from the following available sources:
 - BIA will obtain accurate and adequate descriptions of all real property from the Land Title and Records Office (LTRO);
 - BIA will obtain information on all encumbrances on the real property, including leases, from the LTRO;
 - BIA will obtain the fair market value of each real property interest from its Office of Appraisal Services when necessary;
 - 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).

- With regard to the Section 15.203, BIA will request tribal enrollment, family history, certain property title documents and tribal probate orders 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.

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

The collection of this information does not impact small businesses or other small entities. Tribes are not considered to be small entities by the federal government for these purposes.

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 compromising the integrity of the Indian decedent's estate. If BIA is not able to collect the items of information for the probate file, OHA will have a difficult time accurately capturing which assets are part of the estate, and to whom the assets should be distributed. Likewise, if BIA is not able to collect the information 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 a manner:

- * **requiring respondents to report information to the agency more often than quarterly;**
- * **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- * **requiring respondents 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;**
- * **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;**
- * **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- * **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; or
- * **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.**

There are no special circumstances that will apply to this collection.

- 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.**

A 60-day notice for public comments was published in the Federal Register on July 21, 2011 (76 FR 43702-43703). There were no comments received in response to the Federal Register Notice.

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.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The following person regularly obtains respondents 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: Faith Justice, BIA Great Plains Regional Office, Division of Probate and Estate Services, 115 Fourth Avenue, Southeast, MC306C, Aberdeen, South Dakota 57401, telephone: (605) 226-7665. In summary, her previous experience working with respondents on this information collection lead her to conclude that respondents believe the information collection for Probate of Indian Estates is necessary to carry out the function and concur with the burden hours provided for each task.

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

Respondents will not receive any payment, gift, or other remuneration for providing 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), TAAMS, and TFAS, 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 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.

We do not request any information of sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- * **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 the 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 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. Instead, this cost should be included under “Annual Cost to Federal Government.”**

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 already reflected in item 12.)

- * **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- * **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- * **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

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 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 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.

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 in hour or cost burden.

Adjustments were made to the number of respondents for the information collection associated with section 15.203, to reflect that three more tribes were Federally recognized since the last OMB approval. This change has increased the number of responses by 30 and has increased the number of burden hours by 60.

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 information collection will not be published.

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.

We intend to display the OMB Control Number and the expiration date.

18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

We are not seeking any exceptions to the certification statement.

Attachment A

TABLE 1. ESTIMATED BURDEN HOURS FOR PUBLIC

CFR Section	Description of Info Collection Requirement	No. of Respondents (Annual)	Responses per Respondent (Annual)	Hourly Burden per Response	Total Hourly Burden (Annual)*	Cost Burden @ \$29.12/hour ³
15.9	Testator affidavit for self-proving will	1,000	1	0.5	500	\$14,560
15.9	Witness affidavit for self-proving will	2,000	1	0.5	1,000	\$29,120
15.104	Reporting req.- death certificate ¹	5,850	1	5	29,250	\$851,760
15.105	Provide probate documents	21,235	1	45.5	966,193	\$28,135,540.16
15.203	Provide tribal information for probate file ²	565	10	2	11,300	\$329,056
15.301	Reporting funeral expenses	5,850	1	2	11,700	\$340,704
15.302	File claim against estate (affidavit)	N/A	N/A	N/A	N/A	\$0
15.305	Provide info on creditor claim (6 per probate)	35,100	1	0.5	17,550	\$511,056
Total					1,037,493	\$30,211,796

*No. of Respondents x Responses per Respondent x Hourly Burden per Response= Total Hourly Burden

¹For the purposes of this part only, we have used the number 5,850 as the number of individual Indian decedents' estates that are probated on the average each year.

² For the purposes of this part only, we have assumed that each federally recognized tribe will have approximately 10 decedents per year for which the tribe will have to provide enrollment, family history or other data for heirs and devisees of those decedents during probate.

³The cost of reporting and recordkeeping by the public is estimated to be approximately \$29.12/hour on average. This figure is based on the wages and salaries average of \$20.80 multiplied by 1.4 to address benefits, as reported by Bureau of Labor Statistics, Employer Costs for Employee Compensation – June 2011; USDL 11-1305, as a guide for our estimates. See www.bls.gov/news.release/pdf/eccec.pdf. We have used this figure as a medium figure that would indicate the cost of having a form typed, the cost of taking an hour's time off work or the cost of time at work where providing the information is within the scope of employment, the cost of using one's vehicle, plus time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements.

Attachment A

TABLE 2. ESTIMATED BURDEN HOURS FOR THE FEDERAL GOVERNMENT

CFR Section	Description of Info Collection Requirement	No. of Responses (Annual)	Hourly Burden per Response	Total Hourly Burden (Annual)*	Cost Burden @ \$30.65 /hour ²
15.9	Review affidavits	3,000	0.5	1,500	\$45,975
15.104	Reporting req.- death certificate ¹	5,850	4.25	24,862.50	\$762,035.63
15.301	Reporting funeral expenses	5,850	2.5	14,625	\$448,256.25
15.105	Provide probate documents	21,235	47	998,045	\$30,590,079.25
15.202	Include additional documents in the probate file:	21,235	60	1,274,100	\$39,051,165
15.305	Provide info on creditor claim (6 per probate)	127,410	0.5	63,705	\$1,952,558.25
15.203	Provide tribal information for probate file	5650	0.5	2,825	\$86,586.25
15.503	Notice of Recordkeeping	5,850	1 minute	58.5	\$1,793.03
Total				2,379,721	\$72,938,449

¹For the purposes of this part only, we have used the number 5,850 as the number of individual Indian decedents' estates that are probated on the average each year.

²The estimated average salary for Federal government and tribal compacting employees performing these duties is at the GS-8, Step 5 (\$20.43/hour) level. The salary associated with this grade and step is based on the General Schedule 2011. This salary, multiplied by 1.5 to cover benefits, equals a rate of \$30.65/hour. This benefits multiplier is inferred from the Bureau of Labor Statistics, Employer Costs for Employee Compensation – June 2011; USDL 11-1305.