

# **1Supporting Statement A**

## **Bureau of Indian Affairs Tribal Probate Codes**

**OMB Control Number 1076-0168**

**Terms of Clearance:** None.

### **General Instructions**

A completed Supporting Statement A must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified below. If an item is not applicable, provide a brief explanation. When the question “Does this ICR contain surveys, censuses, or employ statistical methods?” is checked “Yes,” then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

### **Specific Instructions**

#### **Justification**

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

The American Indian Probate Reform Act of 2004 (AIPRA) provides that any tribal probate code, any amendment to a tribal probate code, and any freestanding single heir rule that contains provisions applicable to trust lands 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, the Secretary of the Department of the Interior must approve them. 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 freestanding 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. 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.**

Tribes submit their tribal probate codes in whatever format they choose for the Secretary's 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. Once the tribal probate code, amendment, or single heir rule is approved by the Secretary, and the code, amendment, or rule becomes effective, the code will govern the distribution of trust lands within the jurisdiction of the Tribe.

- 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. The Division of Probate and Estate Services has no specific form to collect information for tribal probate codes. Tribes create custom tribal probate codes according to their specific needs and submit the codes to the Department for approval.

- 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.

- 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.

- 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 eligible members or 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, pursuant to 25 USC 2205, requires submission only upon adoption of the code or amendment to the code, or adoption of a freestanding single heir rule.

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 October 28, 2014 (79 FR 64210). There were no comments received in response to this 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 was contacted 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: Brian Chestnut, Ziontz Chestnut Law Firm, 2101 4<sup>th</sup> Avenue, Suite 1230, Seattle, Washington, 98121, telephone: (206) 448-1230. In summary, he felt the information collection for Tribal Probate Codes was necessary to carry out the function, and concurred with the burden hours provided for each task based on his previous experience working with this information collection. Based on this feedback, there will be no changes to this information collection.

**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.

**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 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.”**

We anticipate receiving responses from approximately 10 tribes, totaling 5 annual burden hours for this information collection or the amount equivalent to \$155. (Rounded).

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 @ \$30.98/hr <sup>1</sup>
18.105, 202, 302	Submit Tribal probate code, amendment, or single heir rule to Department	10	1	0.5	5	\$154.90
<b>Total</b>						<b>\$155</b>

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

<sup>1</sup>The cost of reporting and recordkeeping by the public is estimated to be approximately \$30.98/hour on average. This figure is based on the wages and salaries average of \$22.13 multiplied by 1.4 to address benefits, as reported by Bureau of Labor Statistics, Employer Costs for Employee Compensation – September 2014; USDL 14-2208, as a guide for our estimates. See <http://www.bls.gov/news.release/pdf/ecec.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.

**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.**

We estimate the annual cost to the Federal Government to implement this information collection to be \$1,564.

CFR Section	Description of Info Collection Requirement	No. of Responses (Annual)	Hourly Burden per Response	Total Hourly Burden (Annual)*	Cost Burden @ \$31.28 /hour <sup>1</sup>
18. 05, 202, 302	Review Tribal probate codes, amendments or single heir rules	10	5	50	\$1,564
<b>Total</b>					<b>\$1,564</b>

<sup>1</sup>The estimated average salary for Federal government and tribal compacting employees performing these duties is at the GS-8, Step 5 (\$20.85/hour) level. The salary associated with this grade and step is based on the General Schedule 2015. See [http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/GS\\_h.pdf](http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/GS_h.pdf). This salary, multiplied by 1.5 to cover benefits, equals a rate of \$31.28/hour. This benefits multiplier is inferred from the Bureau of Labor Statistics, Employer Costs for Employee Compensation – September 2014; USDL 14-2208.

**15. Explain the reasons for any program changes or adjustments in hour or cost burden.**

There are no program changes or adjustments in hour or cost burden.

**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.