

through human cellular and tissue-based products, (2) the scope of such proposed national requirements and their impact upon State laws, (3) FDA's proposal not to preempt State laws on legislative consent for cornea transplants, and (4) any issues raised by this proposed rule possibly affecting State laws and authorities. To allow sufficient time for this to occur, as well as to allow all interested persons additional time to evaluate information and submit meaningful comments, the agency is reopening the comment period for 90 days.

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding the proposed rule by July 17, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The proposed rule and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 10, 2000.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 00-9581 Filed 4-17-00; 8:45 am]

**BILLING CODE 4160-01-F**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 70

RIN 1076-AD98

#### Certificate of Degree of Indian or Alaska Native Blood

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This rule will establish documentation requirements and standards for filing, processing, and issuing a Certificate of Degree of Indian or Alaska Native Blood (CDIB) by the Bureau of Indian Affairs (Bureau). This rule will provide the policies and standards that will allow the Bureau to issue, amend, or invalidate CDIBs. The Bureau issues CDIBs to assist individuals in establishing their eligibility for programs and services based upon their status as American Indians and/or Alaska Natives.

**DATES:** Send your comments to reach us on or before July 17, 2000.

We plan to hold consultations on this proposed rule. The dates of the consultations are:

April 14, 2000, in Anchorage, Alaska; May 10, 2000, in Rapid City, South Dakota; and

May 24, 2000, in Albuquerque, New Mexico.

See **SUPPLEMENTARY INFORMATION** for the addresses of the consultations. Each meeting will begin at 9:00 a.m. and end at 4:00 p.m. (local time).

**ADDRESSES:** You may mail comments to Karen Ketcher, Branch of Tribal Operations, Eastern Oklahoma Region, Department of the Interior, Bureau of Indian Affairs, 101 North 5th Street, Muskogee, OK 74401. You may also hand-deliver comments to us at Room 426, at the same address. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under "Electronic access and filing address." Comments will be available for inspection at this electronic address from 9:00 a.m. to 3:00 p.m. Central Standard time, Monday through Friday beginning approximately two weeks after publication of this proposed rule in the **Federal Register**.

#### **FOR FURTHER INFORMATION CONTACT:**

Karen Ketcher, Tribal Operations, Eastern Oklahoma Region, Bureau of Indian Affairs, 918-687-2313.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-800-877-8339 between 8:00 a.m. and 4:00 p.m. Central Standard time, Monday through Friday, excluding Federal holidays.

#### **SUPPLEMENTARY INFORMATION**

##### **I. Public Comment Procedures**

###### *Electronic Access and Filing Address*

You may access an electronic version of this proposed rule through our home page ([www.doi.gov/bia/otshome.html](http://www.doi.gov/bia/otshome.html)). You may also comment via the Internet to: [Karen.Ketcher@bia.gov](mailto:Karen.Ketcher@bia.gov). Please also include "Attention: 1076-AD98" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at 918-687-2313.

###### *Written Comments*

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. We may not consider or include in the Administrative Record for the final rule

comments which we receive after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**). Comments, including names, street addresses, and other contact information of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m. Central Standard time), Monday through Friday, except Federal holidays. We will also post all comments on the regulation's Internet page at the end of the comment period. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, and other contact information (such as Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

###### *Consultations*

We will hold consultations at the following locations on the dates and times specified:

April 14, 2000, in Anchorage, Alaska, at the Holiday Inn, 239 W. 4th Avenue, Anchorage, Alaska 99501;

May 10, 2000, in Rapid City, South Dakota at the Best Western Ramkota Hotel, 2111 North LaCrosse Street, Rapid City, South Dakota 57701; and,

May 24, 2000, in Albuquerque, New Mexico at the Best Western Winrock Inn, 18 Winrock Center, Albuquerque, New Mexico 87110.

Any person who wants to participate in a particular consultation should notify Karen Ketcher, the person identified under **FOR FURTHER INFORMATION CONTACT** at least one week before the consultation. If no one expresses an interest in participating in a consultation at a given location by that date, we will not hold that consultation. If only one person expresses an interest, we may hold a public meeting rather than a consultation, and we will include the results in the Administrative Record. If we hold a consultation, we will continue the consultation until everyone who wants to testify has done so. In order to assist the transcriber and to ensure an accurate record, we request that you give the transcriber a copy of your testimony. In order to assist us in preparing appropriate responses/answers to your questions, we also ask that if you plan to testify, please submit

an advance copy of your testimony to us at the address previously specified (See **ADDRESSES**). However, this submission of the advance copy of your testimony is not required.

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the consultation, such as interpreting service, assistive listening device, or materials in an alternate format, must notify Karen Ketcher, the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled consultation date. Although we will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

## II. Background

A Certificate of Degree of Indian or Alaska Native Blood (CDIB) certifies that an individual possesses a specific degree of Indian blood of a federally recognized Indian tribe(s). A deciding Bureau official issues the CDIB. We issue CDIBs so that individuals may establish their eligibility for those programs and services based upon their status as American Indians and/or Alaska Natives. A CDIB does not establish membership in a federally recognized Indian tribe, and does not prevent an Indian tribe from making a separate and independent determination of blood degree for tribal purposes.

In reviewing the Bureau's practices, the Interior Board of Indian Appeals (IBIA) ruled that the degree of Indian blood of an individual Indian cannot be changed by the Bureau on the basis of "the evidentiary standards set forth in *unwritten* policy statements" and advised the Bureau to develop and issue regulations, *Underwood v. Deputy Assistant Secretary-Indian Affairs*, 93 I.D. 13, 14 IBIA 3, January 31, 1986. In the absence of regulations, the Bureau has been without the authority to invalidate or amend CDIBs issued in error. As a result, there are individuals who do not receive services for which they may qualify and individuals who receive services for which they do not qualify.

Some early Bureau and tribal records do not indicate degrees of Indian blood or are inconsistent. Changes and corrections have been made to these records without an indication of who made the change or the basis upon which they were made. Errors occurred when individuals submitted delayed or amended birth certificates and delayed death certificates as documentation for Indian blood certification. Amended

birth documents often contain unreliable birth data, or data that was received long after the original birth certification had been issued. For example, some birth fathers do not recognize their children until later in life or when ordered to do so by a court having jurisdiction, long after a birth certification may have first been issued. Adoption records often contain limited birth data. Only extensive research provides additional birth data. Corrections are required when birth certificates and death certificates are amended, adoption and paternity records become available, or complete family history information and/or documents not initially submitted are received.

The rolls of federally recognized Indian tribes may be used as the basis for issuing CDIBs. The base rolls of some tribes are deemed to be correct by statute, even if errors exist. For example, the 1906 Federal rolls for the Cherokee, Chickasaw, Choctaw, Creek, and Seminole were prepared for purposes of allotment of tribal lands, and persons of two or more of these tribes were enrolled only with the tribe of the territory of his/her residence and only with that tribe's blood degree listed. Subsequently, the Act of August 4, 1947, 61 Stat. 731, declared that the base rolls of these tribes are conclusive as to blood degree when determining the restricted status of inherited, allotted lands.

Existing federal laws and regulations require some form of proof of Indian blood for various purposes. Some of these regulations even expressly refer to Certifications of Degree of Indian Blood. Unless these laws and regulations are amended to eliminate the need for a method of proving Indian blood or Indian blood degree, uniform standards for issuance, amendments and denials of Certificates of Degree of Indian Blood are essential for compliance with the law.

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 sections 463 and 465 of the Revised Statutes, and 25 U.S.C. 2 and 9. Publication of the proposed rule by the Department provides the public an opportunity to participate in the rule making process. Interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this document.

## III. Procedural Matters

### *Executive Order 12866*

In accordance with the criteria in Executive Order 12866, this proposed

rule is not a significant regulatory action. This proposed rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Nor does this proposed rule create inconsistencies with other agencies' actions; affect entitlements, grants user fees, loan programs, or their recipients; or raise novel legal or policy issues.

### *Regulatory Flexibility Act*

This proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Neither a Regulatory Flexibility Analysis or a Small Entity Compliance Guide is required.

### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act, this proposed rule will not "significantly or uniquely" affect small governments nor does it produce a Federal mandate of \$100 million or more in any year.

### *Executive Order 12630*

In accordance with Executive Order 12630, this proposed rule does not have "significant takings" implications. This rule does not pertain to "taking" of private property interests, nor does it impact private property.

### *Executive Order 13132*

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of States.

### *Executive Order 12988*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system.

### *National Environmental Protection Act*

In accordance with the National Environmental Protection Act and 318 DM 2.2(G) and 6.3(D), this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

### *Paperwork Reduction Act*

Sections 70.11, 70.22, 70.23, 70.24, 70.30, and 70.34 contain information collection and submission requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of the proposed regulations to the Office of

Management and Budget (OMB) for review. The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We will not require collection of this information until OMB has given its approval.

#### 1. Information Collection Request

*Type of Review:* New.

*Title:* Request for Certificate of Degree of Indian or Alaska Native Blood.

*Affected Entities:* Individual Indians who may be eligible to receive program services based upon their status and/or degree of Indian or Alaska Native blood.

*Abstract:* The purpose of this collection is to assist in determining the eligibility of individuals for various programs and services available to American Indians and Alaska Natives. Disclosure of information may be given to the Department of the Interior and the Department of Justice when required for litigation or anticipated litigation. Notification of inquiries or access must be addressed to the appropriate Regional Director, Bureau of Indian Affairs.

Submission of this information is voluntary. However, not providing information may result in a determination that an individual is not eligible to receive program services based upon his/her status as an American Indian or Alaska Native. The information to be collected includes: certificates of birth and death, probate determinations, court orders, affidavits, Federal or tribal census records, and Social Security records.

All information and documentation is to be collected once from each Requester. The reporting and record keeping burden for this collection of information is estimated to average 1.5 hours for each response for an estimated 285,000 requests per year or 427,000 hours, including the time for reviewing instructions, searching existing data sources and gathering needed data. Collection of information and documentation for the appeals procedures is expected to involve 12 regions receiving 2,400 appeals. The reporting and record keeping burden for this collection of information is estimated to average 2.5 hours for each appeal for an estimated 6,000 hours per year, including the time for reviewing instructions, searching existing data sources and gathering needed data. Thus, the estimated total annual reporting and record keeping burden for this entire collection is estimated to be 433,000 hours.

Individuals will be required to sign, under penalty of perjury, a statement

verifying the truth of all of the information provided in the CDIB packet.

2. We consider comments by the public on this proposed collection of information in:

(a) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(b) Evaluating the accuracy of the agency's estimates of burden of the proposed collection of information, including the methodology and assumptions used.

(c) Enhancing the quality, utility, and clarity of the information to be collected.

(d) Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Tribes, organizations and individuals desiring to submit comments on the information collection requirement should direct them to Attention: Desk Officer for the Department of the Interior, Office of Information & Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Room 10102, Washington, DC 20503. A copy should be sent to Karen Ketcher, Branch of Tribal Operations, Eastern Oklahoma Region, Department of the Interior, Bureau of Indian Affairs, 101 North 5th Street, Muskogee, OK 74401, or hand deliver them to Room 426, at the same address. Comments will be available for inspection at this address from 9:00 a.m. to 3:00 p.m., Central Standard Time, Monday through Friday beginning approximately two weeks after publication of this proposed rule in the **Federal Register**. Please note, these comments on the proposed form are in addition to comments you may have on the proposed regulation itself.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

#### *Small Business Regulatory Enforcement Fairness Act*

This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). This proposed rule does not have an annual effect on the economy of \$100 million or more nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This proposed rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Executive Order 13084*

Executive Order 13084 requires each agency to have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. On January 31, 1986, the Interior Board of Indian Appeals (IBIA) ruled that the degree of Indian blood of an individual Indian cannot be changed by the Bureau on the basis of "the evidentiary standards set forth in unwritten policy statements" and advised the Bureau to develop and issue regulations, *Underwood v. Deputy Assistant Secretary-Indian Affairs*, IBIA 93 I.D. 13, 14, IBIA 3. This IBIA decision affected tribes in eastern Oklahoma.

As a result, representatives from the Bureau Central Office, the Eastern Oklahoma Region, the Tulsa Office of the Field Solicitor, and the tribes which contracted the CDIB function under the Self-Determination and Education Assistance Act, P.L.93-638, met on August 11-13, 1987, at the Chickasaw Motor Inn, Sulphur, Oklahoma, to develop CDIB regulations for eastern Oklahoma. Ten of the twenty-seven individuals attending this meeting represented various tribes in eastern Oklahoma. On September 13-14, 1988, this same work group met again for a second meeting in Muskogee, Oklahoma, to continue the work on these CDIB regulations. A Central Office Enrollment staff member attended this meeting and recommended that the CDIB regulations be written as nationwide regulations for the Bureau. The work group accepted this recommendation and held nine additional meetings beginning May 10, 1989, through June 15, 1992, when a draft was forwarded to Central Office,

Division of Tribal Government Services, Washington, D.C. On September 13–16, 1994, two members of the work group (one tribal and one Bureau) traveled to Washington, D.C. to prepare the draft for publishing in the **Federal Register**.

In the mean time, the Inter-Tribal Council for the Five Civilized Tribes (Cherokee, Chickasaw, Choctaw, Creek, and Seminole) passed Resolution No. 97–13, on April 11, 1997, requesting that the proposed regulations drafted by the Bureau and Tribal personnel be published. A second request, Resolution No. 97–18, enacted on July 11, 1997, urged publication of the proposed CDIB regulation. On December 2–3, 1999, the Eastern Oklahoma Region conducted a CDIB technical assistance workshop to train approximately 45 individuals (30 being tribal enrollment staff), who are involved with the CDIB function. They fully supported the publication of the proposed CDIB regulations.  
OMB Control #1076–01\_\_\_\_  
Expiration Date: \_\_\_\_

#### **Bureau of Indian Affairs Certificate of Degree of Indian or Alaska Native Blood Instructions**

All portions of the Request for Certificate of Degree of Indian or Alaska

Native Blood (CDIB) must be completed. You must show your relationship to an enrolled member(s) of a federally recognized Indian tribe, whether it is through your birth mother or birth father, or both. A federally recognized Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community which appears on the list of recognized tribes published in the **Federal Register** by the Secretary of the Interior (25 U.S.C. § 479a–1(a)).

- Your degree of Indian blood is computed from lineal ancestors of Indian blood who were enrolled with a federally recognized Indian tribe or whose names appear on the designated base rolls of a federally recognized Indian tribe.

- You must give the maiden names of all women listed on the Request for CDIB, unless they were enrolled by their married names.

- A *Certified Copy of a Birth Certificate* is required to establish your relationship to a parent(s) enrolled with a federally recognized Indian tribe(s).

- If your parent is not enrolled with a federally recognized Indian tribe, a *Certified Copy of your parent's Birth or Death Certificate* is required to establish

your parent's relationship to an enrolled member of a federally recognized Indian tribe(s). If your grandparent(s) were not enrolled members of a federally recognized Indian tribe(s), a *Certified Copy of the Birth or Death Certificate for each grandparent* who was the child of an enrolled member of a federally recognized Indian tribe is required.

- Certified copies of Birth Certificates, Delayed Birth Certificates, and Death Certificates may be obtained from the State Department of Health or Bureau of Vital Statistics in the State where the person was born or died.

- In cases of adoption, the degree of Indian blood of the natural (birth) parent must be proven.

- Refer to 25 CFR Part 70, CDIB to determine what documents are acceptable.

1. Your request and supporting documents should be returned to the Agency from whom you receive services.

2. Incomplete requests will be returned with a request for further information. No action will be taken until the request is complete.

**BILLING CODE 4310–02–P**

OMB Control #1076-01  
 Expiration Date: \_\_\_\_\_  
 Page: 1

**BUREAU OF INDIAN AFFAIRS  
 REQUEST FOR CERTIFICATE OF DEGREE OF INDIAN OR ALASKA NATIVE BLOOD**

Requester's Name (list all names by which Requester is or has been known):	Requester's Address (including zip code):	Date Received by Bureau of Indian Affairs:
Requester's Date of Birth:  Requester's Place of Birth:  Is Requester Adopted? <input type="checkbox"/> Yes <input type="checkbox"/> No  Are Requester's Parents Adopted? <input type="checkbox"/> Yes <input type="checkbox"/> No  If Yes, list natural (birth) parents: (If known)  Tribe(s) with which Requester is enrolled:  Roll Nos:	Father's name:  Tribe: Roll No.: DOB: Deceased <input type="checkbox"/> Yes <input type="checkbox"/> No Year _____  Mother's Name:  Tribe: Roll No.: DOB: Deceased <input type="checkbox"/> Yes <input type="checkbox"/> No Year _____	Paternal Grandfather's Name: Tribe: Roll No: DOB: Deceased/Year _____  Paternal Great Grandmother's Name: Tribe: Roll No: DOB: Deceased/Year _____  Paternal Great Grandfather's Name: Tribe: Roll No: DOB: Deceased/Year _____  Paternal Great Grandmother's Name: Tribe: Roll No: DOB: Deceased/Year _____  Maternal Grandfather's Name: Tribe: Roll No: DOB: Deceased/Year _____  Maternal Great Grandmother's Name: Tribe: Roll No: DOB: Deceased/Year _____  Maternal Great Grandfather's Name: Tribe: Roll No: DOB: Deceased/Year _____  Maternal Great Grandmother's Name: Tribe: Roll No: DOB: Deceased/Year _____

**NOTICES AND CERTIFICATION****NOTICE OF APPEAL RIGHTS.**

- When you receive your CDIB, you must review it for the correct name spelling, birth dates, and blood degrees. If you believe that there are any mistakes on the CDIB, you must give a written request for corrections and provide supporting documentation to the issuing officer within 45 days (60 for Alaska tribes) of the date on the letter. If you fail to meet this deadline, appeal rights will be lost. If the issuing officer decides that corrections are not needed, he or she will send a written determination with an explanation through certified mail to you and provide you with a copy of the appeals procedures contained in 25 CFR §§ 70.30 - 70.37.
- If you are denied a CDIB, you will be given a written determination with an explanation for the denial and a copy of the appeal procedures.

**NOTICE OF PAPERWORK REDUCTION ACT.**

The information collection requirement contained in 25 CFR § 70.11 and this request have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned clearance number \_\_\_\_\_. The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Information is collected when individuals seek certification that they possess sufficient Indian blood to receive Federal program services based upon their status as American Indians or Alaska Natives. The information collected will be used to assist in determining eligibility of the individual to receive Federal program services. The information is supplied by a respondent to obtain a Certificate of Degree of Indian or Alaska Native Blood. It is estimated that responding to the request will take an average of 1.5 hours to complete. This includes the amount of time it takes to gather the information and fill out the form. If you wish to make comments on the form, please send them to the Information Collection Control Officer, Bureau of Indian Affairs, 1849 C Street NW, MS 4657-MIB, Washington, DC 20240. Note: comments, names and addresses of commentators are available for public review during regular business hours. If you wish us to withhold this information, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. In compliance with the Paperwork Reduction Act of 1995, as amended, the collection has been reviewed by the Office of Management and Budget and assigned a number and expiration date. The number and expiration date are at the top right corner of the form. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless there is a valid OMB clearance number.

**NOTICE OF PRIVACY ACT STATEMENT.**

This information is collected as provided pursuant to the Privacy Act, 5 U.S.C. 552a. The Bureau of Indian Affairs will not disclose any record containing such information without the written consent of the respondent unless the requestor uses the information to perform assigned duties. The primary use of this information is to certify that an individual possesses Indian blood to receive Federal program services. Examples of others who may request the information are U.S. Department of Justice or in a proceeding before a court or adjudicative body; Federal, state, local, or foreign law enforcement agency; Members of Congress; Department of Treasury to effect payment; a Federal agency for collecting a debt; and other Federal agencies to detect and eliminate fraud.

**NOTICE OF EFFECTS OF NON-DISCLOSURE.**

Disclosure of the information on this CDIB request is voluntary. However, proof of Indian blood is required to receive Federal program services.

**NOTICE OF STATEMENTS AND SUBMISSIONS.**

Falsification or misrepresentation of information provided on this request is punishable under Federal Law, 18 U.S.C. 1001. Conviction may result in a fine and/or imprisonment of not more than 5 years.

I request a CDIB, and certify that I have read the instructions, and above notices about my request for a CDIB. I further certify that the information which I have provided with this request to the Bureau of Indian Affairs is true and correct.

\_\_\_\_\_  
(Requester's signature)

\_\_\_\_\_  
(date)

*Drafting Information*

The primary authors of this document are Karen Ketcher, Tribal Operations Specialist, Eastern Oklahoma Region; Suzanne Chaney, Tribal Government Specialist, Southern Plains Region; Timothy DeAsis, Tribal Government Officer, Alaska Region; Donna Peterson, Tribal Government Specialist, Western Region; De Springer, Tribal Government Officer, Midwest Region; James Vallie, Tribal Government Specialist, Southern Pueblos Agency; Susan Work, Attorney, Tulsa Field Solicitor's Office; Dorson Zunie, Tribal Government Officer, Pacific Region; Duane Bird Bear, Chief, Division of Tribal Government Services, Central Office; R. Lee Fleming, Chief, Branch of Acknowledgment and Research, Central Office; Carolyn Newman, Tribal Enrollment Specialist, Central Office.

**List of Subjects in 25 CFR Part 70**

Alaska Natives, Indians, Indians—Federal certification.

For the reasons given in the preamble, the Bureau of Indian Affairs proposes to add a new Part 70 to Title 25, Chapter I, Subchapter F—Tribal Government, of the Code of Federal Regulations as set forth below.

**PART 70—CERTIFICATE OF DEGREE OF INDIAN OR ALASKA NATIVE BLOOD****Subpart A—General Information**

Sec.

- 70.1 What is the purpose of this part?  
 70.2 What terms do I need to know?  
 70.3 What is a Certificate of Degree of Indian or Alaska Native Blood?  
 70.4 Who issues, amends, invalidates a Certificate of Degree of Indian or Alaska Native Blood; or denies issuance of a Certificate of Degree of Indian or Alaska Native Blood?  
 70.5 Is the information and documentation I submit with my Certificate of Degree of Indian or Alaska Native Blood request available to the public?  
 70.6 Information collection.

**Subpart B—Determining Eligibility**

- 70.10 How do I know if I am eligible to receive a Certificate of Degree of Indian or Alaska Native Blood?  
 70.11 How do I establish my eligibility to receive a Certificate of Degree of Indian or Alaska Native Blood?  
 70.12 How does the Bureau compute my degree of Indian blood and does the Bureau compute Indian or Alaska Native blood of an adoptive parent?  
 70.13 How can I prove my descent if I or an ancestor was born out of wedlock?

**Subpart C—Obtaining a Certificate of Degree of Indian or Alaska Native Blood**

- 70.20 What steps do I need to follow to obtain a Certificate of Degree of Indian or Alaska Native Blood?

- 70.21 Are there penalties for filing false information?  
 70.22 What documents must I submit with my request?  
 70.23 What primary documents can I submit to establish my relationship to a lineal ancestor who is listed on a base roll?  
 70.24 What supporting documents must I submit to establish my relationship to a lineal ancestor listed on a base roll?

**Subpart D—Information on Bureau Actions on Certificate of Degree of Indian or Alaska Native Blood Requests**

- 70.25 How will I know what information the deciding Bureau official will rely upon to determine whether I receive a Certificate of Degree of Indian or Alaska Native Blood?  
 70.26 What steps do I follow if I possess Indian or Alaska Native blood from more than one federally recognized Indian tribe?  
 70.27 What information is shown on the Certificate of Degree of Indian or Alaska Native Blood which the Bureau issued to me?  
 70.28 Do I become a member of an Indian Tribe when the Bureau issues me a Certificate of Degree of Indian or Alaska Native Blood?  
 70.29 What response can I expect from the Bureau when I make a request for a Certificate of Degree of Indian or Alaska Native Blood?

**Subpart E—Appeal Procedures**

- 70.30 What can I do if I do not agree with the deciding Bureau official who issued the degree of Indian blood or other information contained on my Certificate of Degree of Indian or Alaska Native Blood?  
 70.31 What can I do if my request for a Certificate of Degree of Indian or Alaska Native Blood is denied?  
 70.32 What is the deadline for filing my appeal, and what will happen if I do not meet the deadline?  
 70.33 What are the steps for filing an appeal when I disagree with the information on the Certificate of Degree of Indian or Alaska Native Blood which the deciding Bureau official provided?  
 70.34 Can I submit additional information if I choose to file an appeal and what is the burden of proof?  
 70.35 What action can I expect from the Bureau's Regional Director if I file an appeal?  
 70.36 What action can I expect if I appeal the Regional Director's decision?

**Subpart F—Other**

- 70.37 Can my Certificate of Degree of Indian or Alaska Native Blood be invalidated or amended to change my degree of Indian blood? If so, under what circumstances?  
 70.38 Can my Certificate of Degree of Indian or Alaska Native Blood be sent to an authorized third party?

**Authority:** 5 U.S.C. 301; 25 U.S.C. 2 and 9.

**Subpart A—General Information****§ 70.1 What is the purpose of this part?**

This part specifies the requirements for the documentation of degree of Indian blood and uniform standards by which we may issue, amend, or invalidate a Certificate of Degree of Indian or Alaska Native Blood. The Bureau issues CDIBs to assist individuals in establishing their eligibility for programs and services based upon their status as American Indians and/or Alaska Natives.

(a) CDIBs do not establish membership in federally recognized Indian tribes.

(b) CDIBs may not be used for purposes of determining restricted or trust status of Indian lands if the blood degree on the CDIB is inconsistent with a determination of blood degree based on any federal law containing special standards for determination of the landowner's Indian blood degree or for probate purposes.

**§ 70.2 What terms do I need to know?**

As used in this part:

*Adopted person* means a person who has been permanently placed for adoption with a substitute parent(s) pursuant to tribal or state law.

*Authorized representative* means any properly designated person, including the parent of a child (under 18 years), the legal guardian, lawyer, and/or the parent who has legal custody, who files a request or an appeal on behalf of the person.

*Base roll* means the specified allotment, annuity, census, or other roll upon which membership in a federally recognized Indian tribe is based, as designated by a federal statute, by the Secretary, or by the tribe's written governing document, such as a constitution, enrollment ordinance, or resolution; or the Alaska Native Claims Settlement Act roll established pursuant to 43 U.S.C. 1604.

*Bureau* means Bureau of Indian Affairs, Department of the Interior.

*CDIB* means Certificate of Degree of Indian (or Alaska Native) Blood.

*Commissioner* means the Commissioner of Indian Affairs or the Deputy Commissioner of Indian Affairs.

*Deciding Bureau Official* means the Regional Director, Superintendent/Field Representative or the Secretary's designee with delegated administrative jurisdiction for the federally recognized Indian tribe(s) from which your Indian blood is derived.

*Department* means the Department of the Interior.

*Indian* means any person of Indian or Alaska Native blood who is a member

of those tribes listed or eligible to be listed in the **Federal Register** pursuant to 25 U.S.C. 479a-1(a); or any descendant of such person who was residing within its boundaries of any Indian reservation on June 1, 1934; or any person not a member of one of the listed or eligible to be listed tribes who possesses at least one-half degree of Indian blood. For purposes of these regulations, Eskimos and other aboriginal peoples of Alaska shall be considered Indians.

*Indian blood* means Indian or Alaska Native blood of a Federally recognized Indian tribe.

*Indian tribe* means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community which appears on the list of recognized tribes published in the **Federal Register** by the Secretary of the Interior (25 U.S.C. 479a-1(a)).

*Lineal ancestor* means a direct ancestor, such as a parent, grandparent or great-grandparent. Collateral relatives such as aunts, uncles, brothers, and sisters, are not considered lineal ancestors.

*Maternal* refers to the mother's side.

*Paternal* refers to the father's side.

*Regional Director* means the director of a specific Bureau region, or his/her designee, who has delegated administrative jurisdiction over the local field office(s) responsible for administering the affairs of a federally recognized Indian tribe(s).

*Requester* means the individual or the authorized representative making the formal request for a CDIB.

*Secretary* means the Secretary of the Department of the Interior, or his/her designee.

*Superintendent/Field Representative* means the Bureau official in charge of the agency/field office, or his/her designee, who has immediate delegated administrative responsibility for the affairs of a federally recognized Indian tribe.

### **§ 70.3 What is a Certificate of Degree of Indian or Alaska Native Blood?**

A CDIB is an official document that certifies an individual possesses a specific degree of Indian blood of a federally recognized Indian tribe.

### **§ 70.4 Who issues, amends, invalidates a Certificate of Degree of Indian or Alaska Native Blood; or denies issuance of a Certificate of Degree of Indian or Alaska Native Blood?**

Only one of the following deciding Bureau officials with delegated administrative jurisdiction for the federally recognized Indian tribe(s) from which your Indian blood is derived may

sign, issue, amend, or invalidate the CDIB, or deny issuance of the CDIB:

(a) The Regional Director;

(b) The Superintendent/Field Representative; or

(c) The Secretary's designee.

### **§ 70.5 Is the information and documentation I submit with my Certificate of Degree of Indian or Alaska Native Blood request available to the public?**

(a) CDIB records are protected from disclosure under the Privacy Act, 5 U.S.C. 552a. Personal information contained in the CDIB file will not be available to the public.

(b) A statement may be provided to a Federal, State, or local agency that your CDIB has been amended or that your CDIB has been invalidated, if a request is made by a Federal, State, or local agency where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit.

### **§ 70.6 Information collection.**

The information collection requirement contained in § 70.11 has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned clearance number \_\_\_\_\_. Information is collected when individuals seek certification that they possess Indian blood to receive Federal program services based upon their status as American Indians.

## **Subpart B—Determining Eligibility**

### **§ 70.10 How do I know if I am eligible to receive a Certificate of Degree of Indian or Alaska Native Blood?**

You are eligible to receive a CDIB if your name or the name of your lineal ancestor appears as an Indian by blood on a base roll of a federally recognized Indian tribe.

### **§ 70.11 How do I establish my eligibility to receive a Certificate of Degree of Indian or Alaska Native Blood?**

You have the burden of proving you are eligible to receive a CDIB. To establish your eligibility, you must do one of the following:

(a) You must be listed as an Indian by blood on a designated base roll.

(b) You must furnish proof of your relationship to your closest lineal ancestor who has received a CDIB. Your proof must meet the requirements of §§ 70.22 and 70.23. We will presume that your ancestor's CDIB contains an accurate statement of degree of Indian blood unless we find that the blood degree in the CDIB is inaccurate or

unless you challenge the accuracy of the blood degree as stated on that CDIB.

(c) You must furnish proof of your relationship with a lineal ancestor listed as an Indian by blood on the base roll(s). This proof must meet the requirements of §§ 70.22 and 70.23. This paragraph applies only if:

(1) We or you challenge the accuracy of the blood degree contained in the CDIB of your closest lineal ancestor; or

(2) There is no CDIB for your closest lineal ancestor.

### **§ 70.12 How does the Bureau compute my degree of Indian blood and does the Bureau compute Indian or Alaska Native blood of an adoptive parent?**

Your degree of Indian blood is computed from the Indian blood degree of your lineal ancestors. Lineal ancestry and blood degree are based on birth parentage as explained in this section.

(a) You obtain one-half of the Indian blood of each of your birth parents.

(1) You obtain one-half of the Indian blood of your birth mother. For example, if your grandmother was full blood, your mother obtained one-half Indian blood from your grandmother. Using that example, if your mother obtained no Indian blood through her father, then you obtained one-fourth Indian blood from your mother.

(2) You obtain one-half of the Indian blood from your birth father. If you were born out of wedlock, then you will obtain one-half of the Indian blood from your birth father only if his identity is proven under § 70.13.

(3) To calculate your total Indian blood degree, add together your blood degree obtained from your birth mother and your blood degree obtained from your proven birth father. As an example, if you obtain one-fourth degree Indian blood from your mother and one-fourth degree of Indian blood from your father, your degree of Indian blood is one-half ( $\frac{1}{4} + \frac{1}{4} = \frac{1}{2}$ ).

(b) An adoptive parent is not a lineal ancestor and blood degree cannot be derived from an adoptive parent.

### **§ 70.13 How can I prove my descent if I or an ancestor was born out of wedlock?**

This section applies to you if you or one of your ancestors was born out of wedlock. For purposes of blood degree computation, you can prove the identity of your or your ancestor's birth father if you can provide any one of the following for each person born out of wedlock:

(a) The person's certified birth certificate listing the name of the father;

(b) A written document in which the birth father acknowledged paternity of the person born out of wedlock. The document must have been:



(1) Filed in a state court child custody proceeding as defined by the Indian Child Welfare Act, 25 U.S.C. 1903; or

(2) Recorded with an Office of Vital Statistics or other state agency authorized by law to receive paternity acknowledgments in the state where the person was born;

(c) A final court order that contains a finding establishing paternity. The court issuing the order must have jurisdiction in a paternity determination, child support case, parental rights termination, adoption, determination of heirship as described in § 70.23, or other judicial proceeding in which paternity is an essential element; or

(d) A final decision of an administrative law judge in an Indian probate proceeding filed under 43 CFR part 4 that establishes paternity.

**Subpart C—Obtaining a Certificate of Degree of Indian or Alaska Native Blood**

**§ 70.20 What steps do I need to follow to obtain a Certificate of Degree of Indian or Alaska Native Blood?**

To obtain a CDIB you must follow the procedures in this section.

(a) You must request a CDIB form from the local Bureau office.

(b) You must complete the request, including verification that you have read the summary describing your rights if you disagree with any decisions concerning your request.

(c) You must sign the request unless you meet one of the following exceptions:

(1) If you are a minor under the age of 18, only your custodial parent may complete and sign the request for you. A custodial parent includes:

- (i) An adoptive parent;
- (ii) A court-appointed legal guardian; or

(iii) An Indian custodian as defined by the Indian Child Welfare Act, 25 U.S.C. 1903.

(2) If you are physically incapacitated, one of the following may complete the request for you:

- (i) A court-appointed legal guardian;
- (ii) A court-appointed conservator; or
- (iii) A person to whom you have given a written power of attorney.

(3) Only a court-appointed legal guardian may complete the request for an adult who has been declared mentally incompetent by a court having jurisdiction.

(d) After completing and signing the request, you must submit it and any required documents to the Bureau official who has delegated administrative jurisdiction over the federally recognized Indian tribe(s) from which your Indian blood is derived.

**§ 70.21 Are there penalties for filing false information?**

Yes. Under 18 U.S.C. 1001, Bureau personnel are required to report any person who knowingly files false or fraudulent information. Persons

convicted of this offense may be fined and/or imprisoned not more than five (5) years.

**§ 70.22 What documents must I submit with my request?**

When you submit your request for a CDIB, you must also submit the documents required by this section.

(a) If you are listed on an officially approved base roll, the only thing you must submit is a request with an original signature.

(b) If you are not on a base roll, you must submit at least one of the primary records required by § 70.23. The record that you submit must establish your relationship to your closest lineal ancestor who either:

(1) Has received a CDIB which contains an accurate statement of degree of Indian blood, or

(2) Is listed on a base roll.

(c) Depending upon which of the documents listed in § 70.23 you submit, you may also have to submit additional documents required by § 70.24.

**§ 70.23 What primary documents can I submit to establish my relationship to a lineal ancestor who is listed on a base roll?**

To meet the requirement in § 70.22(b) for establishing your relationship to an ancestor, you must submit at least one of the documents listed in the following table. Each document that you submit must meet the conditions shown in the table.

If you submit a primary document such as . . .	It must . . .	And . . .	And . . .
(a) Birth certificate . . . . .	Be certified by the state where you and/or your lineal ancestor were born.	You must submit the original reproduction of the birth certificate that contains the person's parentage, the state seal, the state registrar's signature, and the state file number. <sup>1</sup>	
(b) Delayed certificate of birth . . . . .	Be certified by the state where you and/or your lineal ancestor were born.	You must submit the original reproduction of the delayed birth certificate that contains the person's parentage, the state seal, the state registrar's signature, and the state file number.	You must verify the birth parent information by submitting at least one of the supporting documents listed in § 70.24. <sup>1</sup>
(c) Record showing that you or your ancestor were born outside the United States.	Be a certified copy of the official U.S. Department of State record of birth or a certified copy or translation of the record of birth on file with the foreign agency responsible for recording vital records.	If the Department of State record is not available, you may submit the Department of State's Notice of No Record on File and a certified copy or translation of the record on file with the foreign agency responsible for recording vital records.	
(d) A replacement birth certificate due to adoption.	Show your new name and the name(s) of your adoptive parent(s).	You must also submit one of the documents identified in § 70.24(b).	
(e) A certificate of death or a delayed certificate of death for your lineal ancestor.	Show the ancestor's parentage . . .	You must submit the original reproduction of the death record, showing parentage, the state seal, the state registrar's signature, and the state file number.	You must also verify the "parent's names" by submitting at least one of the documents listed in § 70.24.

If you submit a primary document such as . . .	It must . . .	And . . .	And . . .
(f) A determination of heirship . . . . .	Be issued by order of a court having jurisdiction in a determination of heirship proceeding.	Filed under Federal statute, an administration of estate or probate proceeding; or issued by order of an administrative law judge in an Indian probate proceeding filed under 43 CFR part 4. <sup>2</sup>	You must submit at least one of the supporting documents listed in § 70.24(a)(2)–(5).

<sup>1</sup> If state law prohibits the release of a full photocopy of the birth certificate or delayed birth certificate without a court order, you may submit a computer generated or transcriptional record. The record must be verified by the sworn statement or affidavit of your Indian parent, family member (if Indian parent(s) is deceased), or other person familiar with your family ancestry (if Indian parent(s) or other family member(s) are deceased). A sworn statement or affidavit must follow the requirements of § 70.24(a)(4).

<sup>2</sup> The order must identify the heirs of the decedent who is the subject of the proceeding. The order will only be used to prove family relationships; no specific recitation or finding of blood degree contained in the order may be used as evidence of blood degree. An order determining heirs in a quiet title, partition or other civil action may not be used as a primary document.

**§ 70.24 What supporting documents must I submit to establish my relationship to a lineal ancestor listed on a base roll?**

you must also submit at least one of the supporting documents specified in the following table.

(a) If you submit one of the primary documents listed in § 70.23(b), (e), or (f),

You can submit a supporting document such as . . .	But . . .
(1) A determination of heirship court order or administrative law judge order as described in § 70.23(f) as a supporting document.	If you use a determination of heirship or administrative law judge order as a primary document, you cannot use another determination of heirship or administrative law judge order as a supporting document. It does not necessarily establish parentage.  You must follow the rules in § 70.24(c). <sup>1</sup>
(2) The hospital birth certificate as a record of birth to support a primary document.	
(3) A certified transcription issued by the Bureau of Census, proof of death and heirship records and per capita payment records, Federal and tribal census records, and Social Security records..	
(4) An affidavit or an original written declaration made under oath before a notary public may be used to support a primary document to identify or clarify discrepancies in names and to verify facts.	

<sup>1</sup> If identification is not questioned, minor variations, such as in spelling of names, may not require further proof.

(b) If you or one of your lineal ancestors was adopted and you

submitted a replacement birth certificate as a primary document under § 70.23(d),

you must submit one of the documents specified in the following table.

If . . .	And . . .	Then . . .
(1) The adoption occurred after November 8, 1978.	We received adequate documents from the adoption court or attorney of record under the Indian Child Welfare Act (25 U.S.C. 1951).	Ask us to use all of the documents that identify the adoptee's birth parents. <sup>1</sup>
(2) The adoption occurred after November 8, 1978.	We received documents under the Indian Child Welfare Act but they are not sufficient to establish the identity of the adoptee's birth parents.	You must submit one of the documents specified in paragraph (d) of this section.
(3) The adoption occurred after November 8, 1978.	We received no documents on the adoption under the Indian Child Welfare Act.	You must either ask us to request this information from the court which entered the final decree, or submit one of the documents specified in paragraph (d) of this section.
(4) The adoption occurred before November 8, 1978.		You must submit one of the documents specified in paragraph (d) of this section.

<sup>1</sup> We will keep this information in a restricted file that is not accessible to the adopted person or anyone not involved in the certification process.

(c) If you submit an affidavit as a supporting document under § 70.24(a)(4), it must meet all of the following criteria:

- (1) The affidavit must be executed by someone who has personal knowledge of facts or events, such as a relative;
- (2) You cannot execute the affidavit;

- (3) The affidavit must include a statement advising the individual signing the affidavit that he or she is subject to criminal penalties for knowingly filing false or fraudulent information to an agency of the United States Government; and
- (4) The affidavit must be notarized.

(d) To meet the requirements of paragraphs (b)(2) through (b)(4) of this section, you must submit all of the documents specified in any one of the following paragraphs.

- (1) A certified copy of a document or documents which identify the adoptee and the adoptee's birth parents, filed

with the court in the adoption case, such as a consent to adoption, a consent to termination of parental rights, an order terminating parental rights, or an adoption decree;

(2) Any statement, letter or other document provided and executed by a judge of the court which entered the final decree, upon request of the adoptee, which identifies the adoptee and the adoptee's birth parents and tribal affiliation, as authorized by the Indian Child Welfare Act (25 U.S.C. 1917); or

(3) A certified copy of a document which identifies the adoptee by his or her original name, which was filed with the court in the adoption case, together with one of the following:

- (i) An original birth certificate established at the adoptee's birth; or
- (ii) A hospital birth certificate listing the name(s) of the adoptee's birth parent(s).

#### **Subpart D—Information on Bureau Actions on Certificate of Degree of Indian or Alaska Native Blood Requests**

##### **§ 70.25 How will I know what information the deciding Bureau official will rely upon to determine whether I receive a Certificate of Degree of Indian or Alaska Native Blood?**

We will base the decision to issue a CDIB on the standard in § 70.11, using information contained in Bureau and tribal records and additional information that you provide under §§ 70.23 and 70.24.

##### **§ 70.26 What steps do I follow if I possess Indian or Alaska Native blood from more than one federally recognized Indian tribe?**

If you possess Indian blood derived from more than one federally recognized Indian tribe, you may ask the Bureau official to issue a CDIB that confirms your total degree of Indian blood.

(a) If you make this request, you must send a certified copy of any previously issued CDIB documenting blood degree of other federally recognized Indian tribes to the address of the Bureau official.

(b) If you do not have a CDIB showing the tribal blood you possess, you must:

(1) Request a CDIB from the Bureau Office with administrative jurisdiction over the tribe from which your Indian blood is derived; and

(2) If more than one Bureau office is involved, you must submit the CDIBs that you received under this paragraph to the Bureau office under paragraph (a) of this section that you designated to issue the CDIB showing your total blood degree.

##### **§ 70.27 What information is shown on the Certificate of Degree of Indian or Alaska Native Blood which the Bureau issued to me?**

The CDIB that we issue under this part contains all of the information shown in this section.

(a) Your full name as it appears on the state certified reproduction of your birth record or replacement birth record;

(b) Your date of birth;

(c) The date the CDIB is issued;

(d) Your documented blood degree;

(e) The names of the federally recognized Indian tribe(s) from which your blood degree is derived;

(f) The base roll is identified;

(g) The deciding Bureau officer's signature and title;

(h) The issuing office and address; and

(i) The following statement: This CDIB is the property of the U.S. Government. It may not be used to determine restricted or trust status of lands owned by a CDIB holder who is subject to any Federal law containing special standards for determining blood degree for purposes of identifying restricted or trust land status. This document does not constitute membership in the referenced tribe(s). The tribe is the sole determiner of tribal membership and should be contacted for further information. Counterfeiting, altering, or misusing this CDIB is a violation of 18 U.S.C. 499 and 701. The Bureau of Indian Affairs may recall this CDIB upon issuing a final decision to recall after exhaustion of appeal rights.

##### **§ 70.28 Do I become a member of an Indian Tribe when the Bureau issues me a Certificate of Degree of Indian or Alaska Native Blood?**

No.

(a) A CDIB issued by the Bureau does not establish membership in a federally recognized Indian tribe. Only a tribe may determine membership.

(b) The issuance of a CDIB is not an enrollment action and 25 CFR 62.4 is not applicable to actions related to CDIBs.

##### **§ 70.29 What response can I expect from the Bureau when I make a request for a Certificate of Degree of Indian or Alaska Native Blood?**

(a) The deciding Bureau official may determine your degree of Indian blood and issue a CDIB within 45 to 60 days. The deciding Bureau official will notify the requester if more time is needed to process the request.

(1) We will either:

(i) Send you the CDIB by regular mail at the address on your request or change of address received by the deciding Bureau official, or

(ii) Give you the CDIB in person with the letter under § 70.20(a)(2). You will be required to sign and date an acknowledgment that you received both the CDIB and this letter. You will be provided a copy of this acknowledgment as a receipt.

(2) We will include a letter with the CDIB that:

(i) Tells you to carefully review the information on the CDIB to be sure that it is accurate;

(ii) States that if you disagree with any of the information on the CDIB, you should take the steps described in the letter; and

(iii) Describes the steps in § 70.30 of these regulations.

(b) The deciding Bureau official may deny your CDIB request, if you fail to establish that you have Indian blood under the eligibility requirements of § 70.10.

(1) We will either:

(i) Send you the denial in writing by certified mail at the address appearing on your request or change of address received by the deciding Bureau official, or

(ii) Give you the denial in person with the letter under § 70.20(b)(2). You will be required to sign and date an acknowledgment that you received both the denial and this letter. You will be provided a copy of this acknowledgment as a receipt.

(2) The denial letter will:

(i) Explain the reason(s) for the denial; and

(ii) Contain a statement of your appeal rights and enclose a copy of subpart E of this part.

#### **Subpart E—Appeal Procedures**

##### **§ 70.30 What can I do if I do not agree with the deciding Bureau official who issued the degree of Indian blood or other information contained on my Certificate of Degree of Indian or Alaska Native Blood?**

(a) If you do not agree with the degree of Indian blood or other information on the CDIB, you must notify the deciding Bureau official in writing within 45 days of the date of the letter (60 days for Alaska tribes) that transmitted the CDIB. Your notification must:

(1) State that you believe there has been a mistake;

(2) Describe the mistake which you believe has been made; and

(3) Include any additional documentation to show why you believe a correction is needed.

(b) The deciding Bureau official will:

(1) Review your letter and make corrections on the CDIB, if he or she determines that a mistake was made.

(2) Send you a letter containing:

(j) His or her response decision, including a corrected or new CDIB, or an explanation about why his or her decision has not been changed; and

(ii) A statement of your appeal rights and an enclosed copy of this subpart E.

(c) The deciding Bureau official's response decision must be delivered to you either:

(1) By certified mail, return receipt requested, at the address appearing on your request or change of address received by the deciding Bureau official; or

(2) In person, by giving you the response decision and having you sign and date an acknowledgment that you received the response decision and also the corrected or new CDIB, if a corrected or new CDIB is given to you.

(d) If you disagree with the deciding Bureau official's response decision, you may file an appeal if you are the person named in the CDIB. You may also have your authorized representative or an attorney file an appeal on your behalf.

**§ 70.31 What can I do if my request for a Certificate of Degree of Indian or Alaska Native Blood is denied?**

If your request for a CDIB is denied, you may file an appeal if you are the person named in the denial. You may also have your authorized representative or an attorney file an appeal on your behalf.

**§ 70.32 What is the deadline for filing my appeal, and what will happen if I do not meet the deadline?**

(a) You must appeal any decision made under this part within 45 days of receiving the decision (60 days for Alaska tribes). (Decisions made under this part are: a denial decision described in § 70.29(b), a response decision described in § 70.30 or a decision to invalidate or amend your CDIB as described in § 70.37.)

(1) The 45-day appeal period begins on the day of delivery indicated on the return receipt of certified mail, or on the date our records indicate you personally received the letter.

(2) The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to the Regional Director's office.

(3) If the 45th day (60th day for Alaska tribes) falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the appeal period will end on the following working day.

(b) If you do not appeal the decision within the 45-day appeal period (60-day for Alaska tribes), the decision becomes final for the Department and is not subject to reconsideration. No extension of time will be granted for filing a notice of appeal.

**§ 70.33 What are the steps for filing an appeal when I disagree with the information on the Certificate of Degree of Indian or Alaska Native Blood which the deciding Bureau official provided?**

You must file your appeal, by mail or by personal delivery, with the Regional Director named in the decision you are appealing.

(a) You may file an appeal on behalf of more than one person. Each appealing party must meet the requirements for appeals and must be listed in the appeal.

(b) Your address and the address of each appealing party must appear in the appeal. You must promptly notify the Regional Director of any change of address, otherwise the address you furnish in the appeal shall be the address of record.

(c) You may request additional time to submit supporting evidence. The Regional Director may grant you a reasonable period to submit your evidence. However, you will not be granted additional time to file your appeal.

(d) If you allow an authorized representative to file your appeal, we will recognize the authorized representative as fully controlling the appeal on your behalf.

(1) We will serve any document relating to the appeal on the authorized representative and consider the document to be served on you.

(2) If you have more than one authorized representative, service upon one of your authorized representatives is sufficient.

**§ 70.34 Can I submit additional information if I choose to file an appeal and what is the burden of proof?**

You should include any supporting evidence not previously furnished and you may include a copy or reference to any Bureau or tribal records having a direct bearing on the action. The burden of proof is on you or your authorized representative.

**§ 70.35 What action can I expect from the Bureau's Regional Director if I file an appeal?**

(a) The Regional Director must acknowledge in writing the receipt of your appeal.

(b) The Regional Director will consider the material that you submit together with whatever additional information he/she considers pertinent. If the Regional Director relies upon any additional information, he/she must identify it in the decision.

(c) The Regional Director may issue special instructions to facilitate his/her work. These instructions must not conflict with this part.

(d) The Regional Director must issue a written decision on your appeal within 60 days after:

(1) Receipt of the appeal; or

(2) Timely submission of any additional documents, if you were given an extension to submit additional documents.

(e) If you are appealing the action of the Regional Director or the Regional Director recuses for cause his/her authority to make a final decision, he/she must forward the appeal to the Commissioner for final action together with any relevant information or records and his/her recommendations.

**§ 70.36 What action can I expect if I appeal the Regional Director's decision?**

If you appeal the Regional Director's decision, the Commissioner must issue a written decision on your appeal within 60 days after:

(a) Receiving your appeal; or

(b) Timely submission of any additional documents, if you were given an extension to submit additional documents.

**Subpart F—Other**

**§ 70.37 Can my Certificate of Degree of Indian or Alaska Native Blood be invalidated or amended to change my degree of Indian blood? If so, under what circumstances?**

(a) Under some circumstances, we can invalidate or amend your CDIB without you asking.

(1) The deciding Bureau official may amend your CDIB if there was a mathematical error in computing degree of Indian blood. For example, if your mother's CDIB shows her degree of Indian blood as 4/4, your father's shows his degree of Indian blood as 3/4, and your CDIB shows your degree of Indian blood as 5/8, the deciding Bureau official will issue a decision that your degree of Indian blood will be increased to 7/8.

(2) The deciding Bureau official may invalidate or amend your CDIB if it contains a substantial error in your degree of Indian blood that results in a manifest injustice to you or to the public interest. For example, if someone obtains a CDIB based on fraudulent proof of descendancy from someone on the base rolls or based on a substantial mistake of fact, the CDIB may be invalidated or amended.

(b) At your request, the deciding Bureau official may amend the degree of Indian blood on your CDIB.

(1) Your request should cite a mathematical error on the base roll or a substantial error related to the determination of your degree of Indian

blood accompanied by any necessary supporting documentation.

(2) If your request does not meet these requirements, the deciding Bureau official may deny the request without further review. If your request meets these requirements, the deciding Bureau official will examine the Bureau records and any other information that you provide, and will make a decision.

(c) The deciding Bureau official must notify you in writing of a decision issued under this section. The notification must:

(1) Include a statement that the decision may be appealed under 25 CFR part 70;

(2) Identify the official to whom you may appeal; and

(3) Enclose a copy of subpart E of this part.

(d) The deciding Bureau official's decision must be delivered to you by certified mail, return receipt requested, at the address appearing on your request or change of address received by the deciding Bureau official, or in person. If the notification of the decision is delivered in person, you will be required to sign and date an acknowledgment that you received both the notification and a copy of subpart E. You will be provided a copy of this acknowledgment as a receipt.

(e) If you disagree with a decision made under this section, you may file an appeal if you are named in the CDIB or the amendment or invalidation of the CDIB. You may authorize a representative, including an attorney, to file an appeal in your behalf.

#### **§ 70.38 Can my Certificate of Degree of Indian or Alaska Native Blood be sent to an authorized third party?**

Yes. Upon your request, the CDIB may be sent or released to an authorized representative or other designated third party.

Dated: April 7, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00-9421 Filed 4-17-00; 8:45 am]

BILLING CODE 4310-02-P

## **DEPARTMENT OF VETERANS AFFAIRS**

### **38 CFR Part 1**

#### **RIN 2900-AJ49**

#### **Outer Burial Receptacles**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** By statute the Department of Veterans Affairs (VA) is authorized to

provide a monetary allowance for each new burial in a VA national cemetery where a privately-purchased outer burial receptacle is used in lieu of a government-furnished graveliner. This document proposes to establish a mechanism for implementing these provisions.

**DATES:** Comments must be received on or before June 19, 2000.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to "OGCRegulations@mail.va.gov". Comments should indicate that they are submitted in response to "RIN 2900-AJ49." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Ken Greenberg, Staff Assistant, Office of Operations Support (402), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Telephone: 202-273-5179 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Public Law 100-322 authorizes VA to provide a graveliner at no cost to the family for the casketed remains of individuals buried in open national cemeteries. Typically, a graveliner is pre-cast concrete or thermoplastic in the form of a box with a removable lid. The casket is placed inside the graveliner which assist in maintaining the integrity of the soil around the grave by reducing the likelihood of a sunken grave.

Public Law 104-275 was enacted on October 9, 1996. The Public Law allowed VA to provide a monetary allowance for each new burial in a VA national cemetery where a privately-purchased outer burial receptacle is used in lieu of a government-furnished graveliner.

Under the Public Law, the monetary allowance is equal to the average cost of the government-furnished graveliner which would have been furnished, minus any administrative costs incurred by VA. As an example, if it costs VA an average of \$125 to purchase a graveliner and the administrative cost to process an allowance for a privately-purchased outer burial receptacle is \$10, VA would pay a monetary allowance of \$115 toward the cost of the privately-purchased outer burial receptacle. VA would update the allowance annually

by notice in the **Federal Register** to reflect the current average cost of purchasing graveliners by VA minus the administrative cost for VA to process the allowance. Under the proposed rule, the next allowance payable for interments occurring during the period from October 9, 1996, through December 31, 1999, would be the rate determined for fiscal year 1999. This would reduce the administrative burden required to calculate allowances, and would expedite payment to recipients. Further, this is warranted since the average cost to the government to purchase graveliners has not varied significantly since 1996.

The average cost of graveliners would not include graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects or double depth graveliners. The costs of these two types of graveliners purchased are not representative of the cost of a single-depth graveliner purchased for installation at the time of interment. The double depth liners hold two caskets, whereas the single depth liners hold one casket. Pre-placed liners are procured as part of a larger gravesite development construction project.

The proposed rule provides that an application for payment of the monetary allowance would not be required. Currently, all information necessary for identifying the individual entitled to payment of the monetary allowance is included in information already being collected under the National Cemetery Administration's Burial Operation Support System (BOSS).

Further, we have a method for determining in almost all cases those individuals entitled to the allowance for purchasing outer burial receptacles prior to January 1, 2000. In almost all cases when an outer burial receptacle was purchased, the person listed as the next of kin paid for it. Accordingly, we believe there is a basis for a presumption that such person paid for the outer burial receptacle. Accordingly, for burials during the period October 9, 1996, through December 31, 1999, the allowance would be paid to the person identified as the next of kin in records contained in the BOSS. However, if a person who is not listed as the next of kin provides evidence that he or she paid for the outer burial receptacle, the allowance would be paid instead to that person.

In burials where a casket already exists in a grave with or without a graveliner, placement of a second casket in an outer burial receptacle would not be permitted in the same grave unless the national cemetery director