

Tribal Consultation on Proposed American Indian Probate Regulations

**February 9, 2021
2:00 pm ET**

Coordinator: Welcome and thank you for standing by. Your line's been placed on the listen-only mode until the question-and-answer session. At that time if you would like to ask a question, you may press Star 1. Today's conference is being recorded. If you have any objections, you may disconnect at this time. I now turn the call over to Elizabeth Appel. You may begin.

Elizabeth Appel: Hi everyone. Welcome to our Tribal Consultation on Updates to American Indian Probate Regulations. This is a consultation on a regulation that published on January 7, 2021, and the regulation affects both Bureau of Indian Affairs, BIA and Office of Hearings and Appeals, OHA Procedures.

So we have with us today the director of OHA, Shayla Simmons and acting director of Bureau of Indian Affairs, Johnna Blackhair. So I'll turn it over first to Director Shayla Simmons.

Shayla Simmons: Thank you, Liz. And welcome, everybody. I'm just going to take a moment here to briefly welcome you and thank you for being on the line today. I hope

you're eager to tell us what you see in these proposed regulations that will help us make the probate process better.

I just wanted to also tell you that this effort's been going on for quite a while now. BIA had some tribal consultation in 2016 and '17 to seek feedback on things that might improve the probate regulations and sometime after the 2017 consultation a working group was formed.

Some of the people from that work group have been heavily involved in drafting the proposed rule you have before you. They've been working long and hard hours to get the place - get to the place where we are, a proposed rule.

So I want to thank all of them who are on the phone as well. They're here to help answer questions if you have them. And so you probably are aware that we proposed a notice or actually published a notice of events, notice of proposed rulemaking in 2019.

There were very few comments at that time, but we did address the comments that were provided in the current language of the proposed rule. And as Liz said, that proposed rule was published on January 7.

I wanted to make sure and tell you that throughout this process we have had management support to keep going and we continue to have that support. And so this is an important opportunity to hear from you and others in the community who are affected by these regulations to tell us whether the proposed language we have provided will help meet the needs of improving the probate process and continuing to strengthen the partnership that OHA has with the Bureau of Indian Affairs and the Bureau of Trust Funds Accounting.

So we're very interested in hearing from you, specifically about the proposed language and whether you think it meets the goal that it states it meets and other issues that you might have or ideas you might have that help us to make these probate regulations a better group of regulations to support the process.

So with that, I'll turn it back to Liz.

Elizabeth Appel: Great. Thank you, Shayla. And I'd like to also give our director of BIA, Johnna Blackhair, the opportunity to welcome you all.

Johnna Blackhair: Thank you, Liz. I want to welcome you all to this consultation session to update the American Indian Probate Regulation to revise 25CFR15 and 43. And I appreciate the opportunity to be here with you all today in this important regulation update.

I have a few formal procedural matters. This is a formal tribal consultation for official designated representatives of federally recognized tribes. Please be sure to identify yourself when and if you comment by your - giving your name and your tribal affiliation.

This session is not open to the press. If you have a member of the press on the line, we respectfully ask that you disconnect at this time. Comments from this session today will be recorded and a transcript will be available at the BIA Web site, www.bia.gov.

You can also submit written comments via email to consultation@bia.gov and we'll accept those until March 8th.

Today, you'll see and you'll be provided a PowerPoint presentation and in this session we are interested in your input, your concerns, any suggestions for the updates of this important regulation to (unintelligible) Indian country.

With that, I'll turn it back over to Liz. Thank you.

Elizabeth Appel: Thank you. And I think we also have our BIA Deputy Director for Field Operations, Bart Stevens, if you'd like to introduce yourself.

Bart Stevens: Thank you. Yes. Good morning or good afternoon, whatever the case may be. My name is Bart Stevens and I'm the acting deputy bureau director for field operations for BIA replacing the retired, Jim James.

I'm just happy to be a part of the call and monitoring the conversation.
Thanks again.

Elizabeth Appel: Thank you. And we have several experts - subject matter experts who are integral in drafting this regulation on the line. So you all get familiar with their voices I'll ask them each to introduce themselves beginning with the - with John Payne.

John Payne: Hello. Good morning or good afternoon. This is John Payne. I'm the chief administrative law judge for the Probate Hearings Division within the Office of Hearings and Appeals and we also have Mary Dickman on the line. So I'll turn it over to her.

Mary Dickman: Hi, everyone. This is Mary Dickman. I'm an attorney advisor at the Probate Hearings Division and yes, I guess that's really all I need to say.

Elizabeth Appel: Great. Thank you. And Josh?

Josh Epstein: Thank you, Liz. Hi, everyone. This is Josh Epstein. I am in the Office of Hearings and Appeals in the director's office with Shayla who spoke earlier today. Thank you for calling in.

Elizabeth Appel: Thank you. And going back to BIA, we have Charlene Toledo.

Charlene Toledo: Hello, everyone. Charlene Toledo. I'm the division chief for Probate Services with BIA. Thank you.

Elizabeth Appel: Thank you. And moving on to our legal counsel in the Office of the Solicitor, Suzanne. Would you like to start?

Suzanne Nunn: Hello, everyone. My name is Suzanne Nun). I'm an attorney advisor in the Solicitor's Office in the Division of Indian Affairs and I - my specialties is - my specialty is probate and thank you for being on this call.

Elizabeth Appel: Thanks. And Karen?

Karen Lindquist: Hi, everyone. My name is Karen Lindquist and I'm the assistant solicitor for the Branch of Trust Services within the Division of Indian Affairs and our branch is responsible for providing legal advice on probate.

Elizabeth Appel: Thank you, Karen. I think that covers everyone. So what we'll be doing today is we have a presentation as Johnna referenced. That presentation is available on our Web site. If you go to BIA.gov, there is on the top toolbar a consultation tab and if you click that tab you'll see schedule and then regulations, documents and development.

And if you click that regulations documents and development, that will take you to a list of all the regulations that are currently in progress in one way or another and the first list of bulleted items, the last item is the American Indian Probate Regulation Update.

And if you click that, you'll see on the second line there there's a link to the proposed rule and then the presentation providing a proposed rule. The link is at the word, "Here."

So that - I went through that relatively quickly. So if any of you would like an emailed copy of the presentation afterward, I'm happy to email that to you if you just email the consultation at BIA.gov email.

But if you go to BIA.gov and the consultations tab and go down to regulations you should be able to find the presentation there to walk through with me as I go through.

So our plan today is to run through the presentation -- which provides an overview of what the changes are -- and then we'll open up the lines for comments and questions.

And so if there's anything that as you - as I'm running through the presentation that you want to come back to where, of course, can come back to it and discuss it further with you, so let's get started.

The presentation, of course, it says updates to American Indian probate regulations and there are two CFR parts that this affects, 25 CFR Part 15 -- which addresses the BIA side of the probate process -- and then 43 CFR 30, which addresses the Office of Hearings and Appeals, the OHA portion of the process.

So as some background, the way the probate process works, first the Bureau of Indian Affairs compiled the decedence probate file and that probate file consists of an inventory of Indian trusts or restrictive assets and family and estate information.

BIA then transmits the probate file to the Office of Hearings and Appeals, OHA. OHA then adjudicates the probate and issues a decision as to who receives which property in the decedent's estate.

So once that probate decision is issued, BIA then distributes the trustee-restricted real property or land in accordance with the decision and the Bureau of Trust Funds Administration, BTFA -- which was formally the OST, Office of Special Trustee for American Indians -- BTFA then distributes the trust fund in accordance with that probate decision.

And if you pull up the presentation, you'll see there's a flowchart providing an overview of the probate process. Basically, an individual with trust-restricted property dies and then BIA prepares the probate file, sends it to OHA, OHA then mails notice of the hearing and BIA posts notices of the hearing.

The OHA judge then conducts the hearing and issues the decision to interested parties, BIA and BTFA and then returns the administrative record to BIA who then distributes the land and to BTFA who distributes the funds.

And that's just a very high level overview of how the probate process works. As far as these regulations, the regulations that are in place now were initially put into place in 2008 following the American Indian Probate Reform Act, AIPRA, an acronym.

So its regulations were then updated, just very minor updates in 2011 and then in 2016 and 2017 BIA started looking at revising these regulations and posted tribal consultations and listening sessions and continued that process in 2019 by publishing formally an advanced notice of proposed rulemaking, which Shayla referred to in the federal register and that AMPRN identified some areas where improvements can be made to the regulation and ask them questions about how the public thought that additional improvements could be made.

And then based on those comments, BIA, OHA incorporated suggestions into this draft-proposed rule or drafted this proposed rule. And so the proposed rule, if you pull it up in the federal register, you'll see there is in what's called the preamble, a large portion of the text that summarizes the comments that we received on the AMPRN and responds to those comments and discusses whether or how they were incorporated to the proposed rule.

And then you'll see the regulatory text in the federal register that are - is the actual regulatory language that is proposed to improve the clarity and efficiency of the probate process and that probate closed more quickly.

So the need for this proposed rule really is to get probates closed more quickly as each open probate case has the potential to create ripple effects of uncertainty as the heirs and devisees and any probate case become decedents themselves.

And, of course, the - each open probate takes a toll both financially and emotionally on families. So by clarifying these regulations we hope to address inefficiencies that could cause delays that keep the probate open and streamline the probate processes in a way that still protects due process so that we can close probate cases so there's earlier certainty in who the heirs and

devises are and so that the estates can be distributed to those heirs and devisees more quickly.

As revisions to the regulations, it's not a wholesale rewrite of the regulations. They are just really targeted revisions for those places where inefficiencies have been or - things that are unclear have been identified.

So those regulatory revisions fall into ten main topics that we'll walk through today and are set out in the presentation. And the first of those effects, the BIA side of the regulations, 25 CFR 15, and that is trust funds for funeral services.

So the situation with trust funds for funeral services is when a person who's responsible for making funeral arrangements for decedents has an immediate need to pay for funeral services.

And so they request funds from the decedent's IAM account to pay for those funeral services. And under the current regulations, the - up to \$1,000 fund, the decedent's IAM account, can be used to pay for funeral services that only FDIAM accounts has a balance of at least \$2,500.

The proposal would be to allow distribution of up to \$5,000 from the decedent's IAM account. so it's an increase of what can come out of the IAM account from 1,000 to \$5,000.

And the proposal is not to require any minimum balance remain in the account. the proposal also clarifies that funds are taken from the balance of the account as of the date of death.

And then moving on to the second topic -- and again, it may seem like I'm going through these quickly, but if you have questions about any of them, we can certainly return to them.

The second topic relates to notice and formal probate proceedings. So under the current regulations, the decline right now is that all eligible heirs and devisees receive mail notice of any formal probate proceeding in which they're an eligible heir or devisee.

The proposal would keep that same standard, but add an exception and the exception would be for co-owner heirs who would inherit just because they're co-owners and there are no other heirs and no tribe with jurisdictions.

So those co-owner heirs would still receive mailed notice if they previously file a request for notice with BIA or OHA, but otherwise if you are a co-owner heir who is - will inherit only because you're a co-owner in the situation where there's no other heirs and no tribal jurisdictions, then you would not receive mailed notice up to formal probate proceedings.

And then the other addition with regard to mailed notice is that the proposed rule specifies that any mailed notice is going to include the decedent's will, if there is one.

And then moving on to physical postings and publications, so besides mailed notice of hearing, there's also some postings. The current regulations. And if you're able to pull up the presentation you'll see there's a chart showing a comparison between current and proposed.

The current regulation requires physical posting at the agency, what jurisdiction over the land, and five locations in the vicinity of where the hearing will be held.

The proposed regulation requires physical postings at the decedent's home agency. So that's a new place where physical posting will - where a notice will be physically posted.

And then if the agency with jurisdiction over the land is different from the decedent's home agency, then there will also be notice of the hearing posted at that agency.

So it's possible that there will be two agencies at which the - there's - the notice is physically posted. And then there's one location in the vicinity of the hearing if an in-person hearing is planned where there'll be physical postings and that if in-person hearing is planned is basically to recognize that now we have virtual hearings that happen.

So the current regulation is saying five locations in the vicinity of the hearing, sometimes it doesn't make sense when there's no physical location of the hearing.

Both the current regulation and the proposed regulation authorize, but don't require physical posting at other places as the judge deems appropriate. And then the current regulation authorizes publication in a newspaper, but the proposed regulation does not include the newspaper authorization, but instead requires publication on OHA's Web site.

So there'll always be a single Web site that anyone can go to to see what hearings are upcoming and rather than trying to figure out which newspaper a notice might be posted in.

Now, those are the physical posting requirements that are proposed, but there is an exception in the proposed rule. And the exception allows OHA to proceed with the hearing without physical posting of notice if physical posting was not possible because of one or two things: Either the agency office is closed or inaccessible, so you can't post at the agency office, or extenuating circumstances prevent personnel from physically posting.

And these exceptions were basically came to mind given the past year and the unusual circumstances that we've all had to deal with this past year. So moving on to partition, this is the third of the ten topics and partitions proposed revisions are to address the situation where a will attempts to divide an allotment into two or more distinct portions and advises at least one of those portions.

So, for example, if the will says I grant the west half of my land to my son and the east half of my land to my daughter, the proposed regulation would specify that the judge may partition the allotment so that the son and daughter receive the west and east halves of land and respectfully as long as the decedent wholly owned the allotment and the portions are adequately described.

So this is really a clarification that was not addressed at all in the current regulations.

And our fourth topic is presumption of death. For those situations where the judge has to determine whether someone is deceased, like, the - if the person

for whom a probate case has been opened or an heir or a devisee, the judge has to determine whether they are deceased as a matter of law.

So the current regulation requires clear and convincing evidence that the person is deceased. Under the proposal, the proposed rule lists evidence that would create a presumption that a person is deceased.

And that presumption could then be rebutted by evidence that the person is still alive or that explains the absence to be consistent with continued life.

And I haven't been saying what sections these correlate to, but you'll see on the presentation in the lower right-hand corner of each slide there is a reference to the section and the regulations that the presentation is referring to.

So our fifth topic is renunciations and this is a proposed Sub-Part H. The current regulation provides that any heir or devisee who wants to renounce an interest that they're going to inherit has to do so before a probate decision is issued and they do so by providing a signed and acknowledge declaration specifying the interest that they're renouncing.

Under the proposed rule, heirs and devisees would have additional time to renounce. So they could continue to renounce before probate decision as the current reg says, but they could also renounce within 30 days after the decision or upon rehearing or if any additional property is added to the decedent's estate.

And the proposed rule would also allow heirs and devisees to renounce their interests at hearings. So they'd have their written declarations acknowledged before a judge.

A sixth topic is summary probate proceedings and that is found at Proposed Sub-Part I and what we mean by summary probate proceeding is an OHA adjudication without a hearing.

So a formal probate proceeding is when there's a full hearing. Summary is when OHA figures out - determines the heirs and devisees without holding a hearing and decides who gets what property without a hearing.

So the current regulation provides that a summary probate proceeding happens when it's a cash-only estate. So no land. And the cash-only estate is \$5,000 or less. Under the current regulation, there can be claims made against the estate by creditors and there's an opportunity to convert the summary probate proceeding to a formal probate proceeding so that a full hearing is held.

Under the proposed regulation, a summary probate proceeding would be available only for cash-only estates of \$300 or less. No claims against the estate would be allowed and there's no opportunity to convert to a formal probate proceeding.

So the opportunity for having a summary probate proceeding is narrowed to - from cash-only estates of \$5,000 to cash-only estates of \$300, but so there may be fewer estates that qualify for summary probate proceedings, but the process for summary probate proceedings is significantly expedited by - because it's only estates of \$300 or less and there's no claims or conversion to formal probate proceedings.

So under current summary probate proceeding provisions, there's notice prior to the proceeding, notice of the summary probate decision and the right to request the (NOBO) review of the probate decision.

Under the proposed rule, there would be no notice prior to the proceeding because there's no longer a need since there's no creditor claims, no opportunity to convert to a formal probate proceeding and heirs and devisees can now renounce after a probate decision is issued.

There's still notice of the summary probate decision that's provided and there's still a right to request review. So the right to request review is by OHA with an appeal to IBIA.

And our seventh topic is rehearings and reopenings and before we get into the proposed changes on this, just some background on, you know, the distinction between these two.

Basically, after a probate decision is issued, if you request review within the first 30 days, that's a rehearing. At the 30th day, the decision essentially closes the case the 30th day after OHA issues the decision and anyone requesting or any review that's requested 30 days after that - did I screw that up? I'm sorry. Let me start over.

After a probate, a decision is issued. If you request a review within the first 30 days, that's a rehearing. If you request reviews after that 30-day point when essentially the case is closed is how I think it's easiest to think of it. If you request review after that 30-day point, any time after that 30-day point it would be a reopening rather than a rehearing.

So rehearings in the current regulation have no limits on the grounds for requesting a review except if faced - if the request for a rehearing is based on new lead discovered evidence, the requestor must state reasons why that evidence wasn't presented before the decision and includes supporting affidavits.

Under the proposed revisions to the rehearings process, the person seeking a rehearing has to allege that there was an error of fact or law in the decision and can raise an issue only if it was raised before or during the hearing.

The proposed rule has the same requirements for the new lead-discovered evidence that the proposed rule adds that a judge can summarily dismiss a request for rehearing if the petition per rehearing is sufficient.

And then reopenings, these are any request for review after the 30-day mark. In the current regulation, there is sort of a mixture of the deadline between the deadline for filing with the deadline, the legal standard that's supplied to reopen.

So the proposed rule separates out the deadline for filing from the legal standard for reopening and specifies that the deadline for filing a request for reopening is one year from the discovery of the error of fact or law.

And the legal standard for reopening says that if more than three years after the date of the probate decision or order, so if the request is received more than three years after the date of decision or order, then the judge will weigh the need to correct the error against the interest and a decision or order being final.

And the current regulation provides that reopening should be to correct errors of law or fact and requires that any allegation of factual error be supported by documentation of affidavits.

The proposed revisions provide that request for reopening should be to correct errors of fact or law, but provides some slide boards on that so that the request

cannot reissue that were already addressed in a prior rehearing or reopening, it cannot raise issues that could've been raised at a prior hearing and you cannot submit evidence that was discoverable at the time the decision was issued or during the rehearing period that first 30 days.

And similarly to the rehearing proposal, it allows the judge to summarily dismiss if the petition is deficient. The proposed rule also provides a process for correcting a non-substantive error in a decision or order.

So under the current regulation to correct a non-substantive or type of classical error, you would have to reopen the probate case. Under the proposed rule, OHA may issue a correction order to correct the non-substantive or type of graphical error without the opening probate case.

So that would be a significantly expedited process. And then moving on to the topic Number 8, Inventory Corrections, this is for situations where BIA identifies additional property or incorrectly included property after OHA has issued a probate decision.

Under the current regulation in the situation OHA issues two orders as first an order notifying parties of the modifications and then a final order if no objections are right - are raised. And then anyone seeking to challenge can challenge that to the IBIA.

Under the proposed rule, OHA would issue a single order that would direct distribution of the additional property or notify all heirs or devisees of the correction and address any changes and thus distribution of the property that results from the correction.

And rather than challenging the IBIA, you would challenge through the OHA reconsideration process.

The ninth topic is purchase of probate and this is one section of the regulations that have been pretty significantly overhauled. So these are found at proposed Sub-Part M and background on what purchase of probate is, AIPRA, the Authorizing Statute, authorizes the department to sell during probate of an estate of any individual who died on or after June 20th, 2006.

All or part of that estate to close an eligible purchaser. And then AIPRA assigns an eligible purchaser to be anyone who falls into one of four categories. First is any devisee or eligible heir who's taking an interest in the same parcel of land in the probate proceedings.

Second is any person who owns an undivided trust or restricted interest in the same parcel of land. So co-owner. Three, the tribe with jurisdiction over the parcel containing the interest. And four, the secretary on behalf of the tribe.

Under the current regulation, an eligible purchaser has to request or may request a - to purchase before OHA issues the probate decision. Under the proposed scheme, the eligible purchaser would have to request their purchase before - request to purchase before the end of the first probate hearing or to purchase property that's been added to the estate within 30 days of the order adding the distribution order that adds that property.

And under the current regulation, the probate case would remain open until the whole purchase at probate process is complete that under the proposed regulations the probate case could close before the completion of the purchase at probate.

So any property that would be subject to a pending request for purchase would be distributed with an encumbrance until the purchase of probate is complete or is denied.

And under the current purchase at probate process, the purchase happens before the probate decision. So there's no - at the time of the purchase, there's no final determination yet of who the heirs and devisees are.

So consent for the purchase at probate then currently is given by provisional heirs and devisees so that who are not the final determined heirs and devisees, but the provisional heirs and devisees.

So to address this, the proposed rule allows for the probate decision with the determination of heirs and devisees to be issued before the purchase happens so that way they can consent the purchase, is given by the determined heirs and devisees rather than provisional heirs and devisee.

And the heir and devisee whose consent is required can at any time notify OHA that they're not willing to consent to solve the property.

And then our last topic is sort of the catch-all miscellaneous category. So there's a couple of items here that are noteworthy. First, the proposed rule would revise the current regulations to require the judge to determine the status of an individual as a meeting the definition of Indian only when relevant rather than the current regulation requires the judge to determine the status of an individual as an Indian in all circumstances, whether it's relevant or not.

The proposed rule would also add sections on how trust personal appeal would be distributed when there are no eligible family heirs and either no land

in the estate or land in the jurisdiction of one or more tribes and would add a new section on how joint tenancy and the anti-LAP provision operate in determining heirs and devisees. Those were two situations that were not preview - are not currently addressed in the regulations, but the proposed rule would clarify.

And then finally, the proposed rule would update definitions to add clarity. So comments on the proposed rule are due March 8th and the preferred method to submit comments is by email at - to consultation@bia.gov.

The federal register notice has some additional means for providing your comments if email does not work for you. And in addition to the tribal consultation session, we're currently - we are also holding a public hearing for individuals on Thursday at the same time, 2:00 p.m. Eastern.

And so after the close of the comment period on March 8th we'll be reviewing comments and making changes as appropriate and our plans are that - to then proceed with publishing a final rule in the federal register.

And once that final rule is published, there'll be at least the 30-day delay before it becomes effective. And the last slide in the presentation provides some contact for additional information that is available. You can feel free to contact me at Elizabeth.appel@bia.gov or (Josh Epstein) with OHA at joshua_epstein@oha.doi.gov.

And there's also a link to the Web page that I referred you all to earlier. So with that, I would like to open it up for comments and questions from the - we have all our subject matter experts on standby to help answer.

I did want to mention that we are focusing this consultation on these proposed revisions.

So if we have a question regarding any specific case, I don't think we'll be able to address any specific probate cases, but to the extent that they relate to the proposed revisions we can discuss that.

So with that, Shirley, I'd like to open the lines for comments.

Coordinator: Thank you. We will now begin the question-and-answer session. If you would like to ask a question, please press Star 1, unmute your line and record your name clearly.

To withdraw your question, you may press Star 2. Again, press Star 1 to ask a question and one moment, please, for our first question. At this time I'm showing no questions. Again, if you'd like to ask a question, just press Star 1.

Elizabeth Appel: Okay. While we wait for people that think about their questions and comments, I'll direct folks back to our Web page for additional information. If you go to BIA.gov and hit the consultations tab on the top toolbar there, that pulls down to schedule, which shows all upcoming consultations for Indian Affairs, but then the second link is regulations and documents and development and that will take you to our regulations page which includes a bullet for American-Indian Probate Regulation updates and on that page there is a link to the proposed rule that was published in the federal register and the presentation that I just walked through.

Coordinator: And again, if you'd like to ask a question, just press Star 1 at this time. I believe we do have a question coming in. One moment, please. We do have a question from James. Your line is open and please state your tribal affiliation.

James Holliday: I'm the land services administrator for our Warm Springs Tribe. And my concern with the regulations is the no physical posting and I know that there's been a lot of, you know - because of the COVID, you know, the BIA's been closed and stuff like that, that, you know, my concern is there's people out there, you know, that have changed their addresses or something like that and without a physical posting they might not have any notice of an upcoming probate.

And so it seems to me there should be some way that they should be able to get a physical posting. So - out there somehow. But, you know, I know the employees are off, you know, and they're working at home, you know?

You've got to, you know, try to do the best you can and it seems to me they should have some type of a physical posting, you know, at least one. And then also I wanted to comment on the partition.

And so, you know, the partition section of the regulations you guys were talking about, you know, it seems to me that that's a pretty good idea that somebody could partition their land by will.

And so, you know, I don't know if it's too late to change the regulations or not, but I know that would be really nice to be able to do that.

And so it's not really what you guys were talking about, but I just wanted to make that suggestion.

And then - so and then I think that was all I can recall I had a question on.

Elizabeth Appel: Thank you, Mr. Holliday. I think we may have some - so the - with regard to your first comment on the physical posting, I think you're referring to the exception to the physical posting requirement saying that the hearing can proceed without physical posting if it was not possible because the agency office is closed or inaccessible or there were extenuating circumstances preventing personnel from physically posting.

So I don't know if anyone from OHA or BIA wanted to respond to that.

James Holliday: Yes, it just seems to me that, you know, if - especially if your offices are closed then it's even more important to have that physical posting. That's all I wanted to say.

John Payne: Yes, this is John Payne with OHA and I appreciate hearing that comment and I think what led to that exception was the experience that we were having where the regulation would require us to post physically at a BIA agency, but then the BIA agency was closed.

So in the hearing that we were going to do, which all our hearings have been telephone hearings since the pandemic started. And so our choice became either postpone the hearing -- which we had to do sometimes -- or somehow, you know, find a way to post it at an agency that was closed, which didn't seem like it was really, you know, helping if people know that the building is closed.

I don't think, you know, people are getting the same kind of notice that you would get if there's activity and traffic there and people are going in there for another reason and then, you know, see the bulletin board and see the postings.

So - but I hear what you're saying. I think one big change that we are making -- and I know it's not a solution for everybody -- but one big change that we are making is we are going to start our notices on our Web site and the address for that Web site in the regs itself and that won't change.

And so if people do have the ability to check the Web site, then they'll always have a place to see the notices of what hearings are coming up.

In terms of the partition, that is something that we are accounting for now in the regulations. If somebody owns an allotment, wholly owns it, then people can do that by will now and they will be able to do it after if this regulation goes into effect.

The purpose of the regulation on partition is just to clarify the circumstances under which somebody can partition and how they would go about it.

Charlene: This is Charlene with the Division of Probate Services, BIA. I know throughout the country different agencies or different probate staff have gotten creative in posting the notice that they've posted outside or on doors, et cetera.

I believe others have used the tribal government offices to post notices as well. But certainly we're willing to take ideas when we further document the procedures and in our handbook that, you know, if you have a recommendation of where we could post if an office is closed would certainly take those recommendations and suggestions when we do our handbooks.
Thank you.

Mary Dickman: Yes, this is Mary Dickman. I'm the attorney advisor at OHA. And I guess I also am wanting to get input from you because we - I think we need this about physical postings, which is what do you think the best way to handle a

situation would be where there were those extenuating circumstances where posting what - physical posting was not available, would - could it be done?

You know, what do you think would be the best way to proceed? Should hearings be postponed? As Charlene asked, do you think that there's maybe a good - a best place for a posting or way to post?

So I guess we're sort of looking for input from, you know, tribes and folks like you about just logistically what's the most effective way to get notice out to people other than the mailing to the families, which we will be continuing to do.

James Holliday: Are you asking me?

Charlene: I'm asking you. Yes. Yes.

James Holliday: Oh, okay. I think it should read instead of no physical posting needed, I think it should say when posting in a public place. Yes, so that - you know, then that kind of, you know, like you said, if it's on the door or at the post office or at the, you know, community grocery store across the street, at least it's in one place. That would be my suggestion. And I thank you guys.

Charlene: Thank you for that great input.

Coordinator: Thank you. Again, press Star 1 to ask a question. Our next question comes from Morgan Bourbonnais. You may ask your question. Please state your tribal affiliation.

Morgan Bourbonnais: Hi. This is Morgan Bourbonnais with Citizen Potawatomi Nation. When it comes to the postings, I just feel like it's not going to be a one-size fits all situation.

Our tribe, we're scattered throughout the United States and we even have tribal members in other countries. So as far as posting them in Anadarko at our regional office, you know, that's almost two hours away. I just don't really see that that many tribal members are actually going to go there for any given reason and even know to go there for a posting.

Now, your tribes who have - who still have reservations and they're all located in the same vicinity, that's one thing, but tribes like ours as far as physical postings go, I just - I don't think it's something that's super-necessary.

And I don't think it's a one-size fits all because other tribes they're, you know, all around each other and they're constantly going to the same places and visiting the same store and things like that and I just think that that needs to be addressed, that what works for one may not work for the other.

Elizabeth Appel: Thank you. And do you have suggestions on - so we want to write the regs in a way that addresses all the different circumstances that tribes have. So do you see anything in addition to the Web site posting that might help for your tribe, for Citizen Potawatomie?

Morgan Bourbonnais: We have a paper that goes out to tribal members monthly. I just - I don't know that getting those in - I don't know that there's a time - a good timeframe to get those done because we usually have to have stuff that goes in there in the month before and we only get notices 30 days ahead.

And so I don't know if it would be extremely timely, but it's a thought that how (unintelligible) very - it's a very - what am I trying - very important thing to many of our members and most of them get them even if they're elderly.

And that's another thing. If you put them on the Web site, what about the elderly members who don't have internet or don't want to have internet and that's just - I don't know. I don't think that's feasible for that certain generation. Does that make sense?

But as far as putting them in, like, the paper, I think that that could probably be worked out in a timely manner. I mean, they may not get it until the week before, but at least they're still - especially if it's a teleconference. At least they're still being notified.

Elizabeth Appel: Thanks. That's an interesting suggestion. Is anyone from OHA or BIA have any thoughts on that?

John Payne: This is John Payne. I appreciate the comment and I think it - what you say makes sense that in terms of not being one-size fits all is something that we have seen over time is for some areas at least addresses becoming more scattered, you know, in different states in different locations and so on.

And so the question on how best to notify people is one that, you know - it's good for us to get as much information on as we can.

So I think the idea with the - you know, the paper makes a lot of sense and I think that if we as OHA are posting our notices on a Web site as we propose, then, you know, certainly, you know, it could be possibly worked out whoever is putting that paper out to check the Web site, you know, at a certain time

before the put the paper out and pulls up any new notices and includes them in the paper or, at least, any of the seen pertinent to the particular tribe.

That seems like something that would definitely help provide notice to people.

Johnna Blackhair: This is Johnna with the Bureau of Indian Affairs. And I know the deputy bureau director for field operations, Mr. Stevens, but would probably agree that the mechanisms to provide notification are vast in Indian country and we're charged to provide modernization of our systems and our processes and update our regulations and provide guidance and handbooks.

So I think it would be best as we develop these and get the input from tribes is to take a look at the means to provide that contact of communication and outreach at the most immediate level with our tribes and our beneficiaries and coordinate that through the handbook.

So we can address the notification and, you know, as an alternative to what's stated in the proposed regs, but also take input from tribes and representatives as we develop the regulations going forward and address the notification aspect at the most immediate level through tribal newspapers, through radio stations, tribal radio stations and hostings within their tribal government offices, as well as, the superintendent (unintelligible) on their bulletin boards and whatnot.

I know some staff out there also go as far as posting on the local post office bulletin boards. So there's a wide variety of practices out there and protocol that could be handled in the true government-to-government relationship at the most immediate level and accommodate those individuals that may not be of that area.

Elizabeth Appel: And, of course, if you have other thoughts on where or how notices could be physically posted, you can also submit them as part of your written comments at consultation@bia.gov.

Coordinator: Thank you. And again, if you have a question, press Star 1 at this time. And at this time I'm showing no further questions. I do believe we - yes, we do - again, press Star 1 if you'd like to ask a question. One moment, please.

And at this time, I'm showing no further questions.

Elizabeth Appel: Okay. Well, I'll take this opportunity to remind everyone that we also have our public session on Thursday at the same time. It's a different call-in number, but we will be running through the same presentation and we'll have subject matter experts there as well to answer any questions or - and to hear your input if you'd like to join on Thursday as well.

But if you have any questions or thoughts today, I encourage you to press Star 1.

Coordinator: And at this time, I'm showing no questions.

Elizabeth Appel: Okay. Well, I want to make sure that everybody has ample opportunity to provide their comments now if you have any that you'd like to make. We do have this time set aside.

If we don't have any further comments or questions, then we'll probably wrap up early. But if you are - if you have - if you're formulating a question or comment and you're unsure whether to ask, I encourage you to ask now.

Coordinator: And we do have a question coming in. One moment. We do have a question from (Stephanie Zarin). You may ask your question. Please state your tribal affiliation.

Stephanie Zehren: Yes. Hi. I'm calling on behalf of the Confederated Tribe of the Umatilla Indian Reservation. And my question just has to do with (unintelligible) is one of the few tribes that as an ILCA-approved inheritance code.

So I'm just wondering if there are any particular aspects of these regulations that you all anticipate would have an impact on those tribes that do have approved inheritance codes that have already been approved by the secretary pursuant to AIPRA.

John Payne: This is John Payne and I am not flashing on anything that would directly affect the Umatilla Inheritance Code. The purchase - there are, as you know, special statutes that apply in the northwest for purchases and so on. There's a separate regulatory section that deals with those.

And a lot of times we look to those and I think the Umatilla code references those for its - for the purchases that take place. And those are not being changed through these regulations; although, we're certainly taking a look at them in terms of what changes might be appropriate to make at a future time for those, but those special statute regulations that are currently there now are not being changed by these regulations.

Stephanie Zehren: Yes, I - and I think specifically also wondered about Sub-Part M, the purchase where they - where there were some significant changes or other significant changes proposed and whether those are anticipated to have any impact on the tribe's option to purchase if there is a - you know, if there is an approved code.

I haven't dug too deeply into it yet, but that was one of the questions that occurred to me as you were discussing the sub-part on changes.

John Payne: Sure. And that's a - I mean, it's a really good question and it makes a lot of sense. I know those changes are directed towards the tribal - the AIPRA tribal purchase, which is at 2206 Sub-Section O in AIPRA 25 USC, which is separate from the purchase that Umatilla does.

Mary, do you have anything to add on that?

Mary Dickman: Well, I was just going to try to clarify that there are various claims of tribal purchases that are addressed in AIPRA and the special purchase codes, the tribal purchase code, is one of them.

Purchase at probate is a very separate one. It's different from - it's a different process than the, for instance, Umatilla codes.

So I don't see that these purchase of probate regs have any bearing or relevance in any way to the Umatilla purchase process.

Stephanie Zehren: Thank you.

Karen Lindquist: Hi, Stephanie. This is Karen Lindquist from the Solicitor's Office. And I would have to agree with both John and Mary, but I don't think that there's any impact from the current proposed draft to the Umatilla Tribal Probate Code, but that being said let our office pull it back out and we'll compare and see if we see that there would be any problem and get back in touch with you.

Stephanie Zehren: That's wonderful. Thank you. I appreciate that.

Karen Lindquist: Sure.

Coordinator: Thank you. And again, if you have a question or a comment, just press Star 1 at this time. I believe we do have a comment coming in or question. One moment, please.

We do have a question or comment from Athena Jim. You may ask your question. Please state your tribal affiliation.

Athena Jim: I was just inquiring about this ad that I ran through or run through something about we will have no (unintelligible).

Elizabeth Appel: I'm sorry. Could you repeat that, please.

Athena Jim: I'm trying to find it. Let's do process and protection for Indian (unintelligible) Americans even less due process and protection for Indian land or land owners. Is it (unintelligible) that you be involved and learn what these new regulations mean for you and your future generations? Hello?

Elizabeth Appel: Thank you. So - hi. So...

Athena Jim: Hi.

Elizabeth Appel: ... I think you're asking are there any proposed changes in these regulations that would affect due process?

Athena Jim: Yes. I'm still waiting for a probate to happen, but due to COVID things are at a standstill and I don't know. I just try to stay on top of things, you know?

Elizabeth Appel: Sure. Sure. I don't know if any of our subject matter experts want to address the due process question.

Athena Jim: Okay. I was just asking. I was just trying to inquire what this was all about, you know what I mean?

Elizabeth Appel: Sure.

John Payne: This is John Payne and yes, I think that's an important question and a fair one. In terms of due process, in terms of notices for family members, before we mail notices to interested parties and family members by first-class mail and under the new regs we continue to do that and that's the primary way that we notify interested parties and family members about the probate that's coming up.

And so we will continue to do that under the new regs. The change that we're making in terms of notice, well, one of the changes, is that we would not be mailing notices to all of the co-owners of allotments if we have a situation where the person did not have family members that would inherit, then the next inherit is the tribal jurisdiction.

And if there's no tribal jurisdiction, then you get to the point where you are distributing to co-owners which can sometimes be in the hundreds. And...

Athena Jim: Yes.

John Payne: ... a lot of times the co-owners don't know the person that died and so on. So that's the main difference. But in terms of the family members, the - who would've gotten notice before by first-class mail, they will still get notice by first-class mail.

Athena Jim: Okay. All right. Thank you.

John Payne: Thank you.

Athena Jim: Okay. That was just my question. I want you guys to have a good day.

Elizabeth Appel: Thank you. You too.

Coordinator: Thank you, again. If you have a question or a comment, just press Star 1 at this time. At this time I am showing no questions or comments.

Elizabeth Appel: Okay. I think we'll do last call for questions and comments. At least last call for today's consultation. There's always the opportunity to provide written input to consultation@bia.gov.

And again, if you'd like a copy of the presentation and you for whatever reason aren't able to pull it off of BIA.gov, please feel free to email consultation@bia.gov and we'll email you a copy of the consultation - I'm sorry - the presentation and please feel free also if you'd like a hard copy please feel free to call me at 202-738-6065.

So this is last call for any comments or questions today.

Coordinator: And again, just press Star 1. One moment, please. And at this time I'm showing no questions.

Elizabeth Appel: All right. A reminder that our deadline for comments is March 8th and, again, you're welcome to join the session on Thursday at 2:00 p.m. Eastern Time. That telephone number is provided in the Proposed Rule Federal Register

publication, as well as, the Web site that I directed you all to earlier on BIA.gov.

Johnna, did you want to provide any closing comments?

Johnna: Yes. Thank you, Liz.

Elizabeth Appel: Thank you.

Johnna: It's been - being here with you all today and I thank the Solicitor's office, as well as, the Division Chief for Probate and the Deputy Bureau Director for Field Operations to be here with us today.

I would like to stress the importance of this rulemaking process so that your input, your suggestions, your comments are incorporated into the final product as we roll this out and get this out to our people in the field, the perspective that you bring is important to the work that we do for Indian country.

And I appreciate your time and your attention in this important probate rulemaking. If there is any comments or suggestions, just follow the Web site that Liz provided to submit. Again, the final submission for comments is March 8. Thank you.

Elizabeth Appel: Thank you, everyone. That concludes today's consultation.

Coordinator: Thank you. And that does conclude today's call. We thank you for your participation. At this time, you may disconnect your lines.

END