

Transcript: Indian Land Title and Records Proposed Rule

**January 12, 2021
1:00 pm CT**

Coordinator: Good afternoon and thank you for standing by. I'd like to inform all participants that your lines have been placed on a listen-only mode until the question-and-answer session of today's call. Today's call is also being recorded. If anyone has any objections, you may disconnect at this time. I would now like to turn the call over to Ms. Elizabeth Appel. Thank you. You may begin.

Elizabeth Appel: Hi. And I will turn the call over to Ms. Johnna Blackhair. She is the Deputy Director for Trust Services with the Bureau of Indian Affairs.

Johnna Blackhair: Good afternoon everyone. Thank you for your time and your attention on the rulemaking process. We're joined here today to listen to our tribal leaders as our leadership and our Indian Nations provide us comments on this proposed rule. And if you can come forward and ask those questions, you can also submit them into Ms. Liz Appel, at her email address.

And she'll go over that information with you all. On the line today I have (Debbie Cobrik). She is with me from the Office of Trust Services in the Division - Deputy Bureau Director for Trust Services. That's me. And Rick Zephier. He's the Deputy Director for - Deputy - the Division Team. I'm

sorry about that. We just hired him and brought him on. So he's helping with the proposed rulemaking and answering questions from the Division of Land, Titles and Records. So with that we can get started.

Elizabeth Appel: Great. And my name is Liz Appel. I'm the Director of the Office of Regulatory Affairs and Collaborative Action here at Indian Affairs, in the Office of the Assistant Secretary for Indian Affairs. And I will be providing an overview of the rule today. We'll be discussing the proposed rule to update 25 CFR Part (150) on Indian land title and records.

Also with us in addition to BIA, I believe we have a representative or two, from the Office of the Solicitor. If you are on, would you like to introduce yourself? Okay. Maybe they're not on. All right. So just an FYI, this is being recorded so there will be a transcript made of this session.

This is a formal tribal consultation session intended for officially designated representatives of federally recognized tribes. If there are any members of the press that are present, we ask that you disconnect at this time. And the overview that I will be providing of the proposed rule, I'll be walking through a presentation that is available on our BIA Web site.

Unfortunately there's no easy way to get there but I will try to walk you through how to access the presentation in case you want to follow along. If you go to our main BIA Web site, that's BIA.gov and you - in the upper left hand corner at least for me, if you scroll - the first tab is About Us, and if you scroll to the first item on that tab it's the Assistant Secretary-Indian Affairs. And then you'll see a list on the left hand margin of - below Asia Home.

And toward the bottom of that list is regulatory affairs and collaborative action. And if you click that there's another list on the left hand side for

regulations and other documents in development. And then that screen takes you to our main list of regulations that are under consideration at that time. The third bullet down is Indian Land Title and Records. And if you click that that would take you to the published proposed rule. But right under that is a link for the presentation.

The other way to get there is to type in this address directly into the HTML bar. It's BIA.gov/AS-IA/RACA/Regulations-And-Other-Documents-In-Development. And thank you for your patience in going through that. But hopefully you all have been able to track that down. If you would like a copy of the presentation and you haven't been able to find it through the Web, please feel free to email me at Elizabeth.Appel@BIA.gov, and I will send you a copy of the presentation.

So let's get started then. Just some background on the proposed rule and Indian land in general. Indian land is of course land that the United States holds in trust or restricted status for individual Indians and tribes. And title documents for Indian land include conveyances, probate orders, encumbrances like mortgages and liens, permits, covenants, leases, rights of way. And then plats, cadastral surveys and other surveys are all title documents that are for Indian land.

The Bureau of Indian Affairs Land Title Records Office or LTRO, maintains title document for Indian Land. The LTRO has several physical offices across the United States. They were established in 1965 as title plants to serve what were then BIA area offices. And each LTRO office is assigned a geographic service area based on BIA regions or tribal reservations, and records title documents primarily within that designated geographic area.

So BIA identified the need for updates to this LTRO regulation. So the current regulation is at 25 CFR Part 150 and those regulations have not been updated since 1981. So there are several aspects of the regulations that are outdated at this point, ranging from the fact that the LTRO locations that are listed in the current regulations, are no longer accurate. So there are physical locations listed there that are no longer reflective of where the LTROs are actually operating in some cases.

And the LTRO now maintains title documents primarily through an electronic system known as TAAMS which is the Trust Asset Accounting Management System. And back when these regulations were written 40 years ago, that was not the case. Everything was in hard copy. And then as a result of other legal updates there have been new categories of documents that no longer require BIA approval in order to be recorded in the LTRO. But they affect to - are authorized to use Indian land.

So for example, now there are leases that - leases of Indian land that tribes may have under their tribal HEARTH regulations but do not require secretarial approval, but nevertheless, addressed who is authorized to use that Indian land. So if you're following along on the Web site, I'm on slide 5, and this is the very high level overview of the proposed rule.

So the proposed rule instead of listing the LTRO physical locations, refers to the BIA Web site for a list of those locations. And the intent there is that the Web site can be much more easily kept up to date and accurate, so at any given time someone can find the physical address for the LTRO office that they're looking for.

The proposed rule also addresses LTRO's electronic maintenance of title documents through an electronic system, TAAMS. It addresses recordation of

that new category of documents that I was talking about. And it clarifies LTRO's role as support office for BIA realty staff for land transactions that Indian landowners request. And for the Office of Hearings and Appeals for title matters that are related to probates.

The proposed rule also clarifies LTRO's role with respect to title defects and how those are handled. And it allows the BIA director to delegate recording responsibilities to another office for certain transactions on an as needed basis, as well as allocate workloads among the LTRO offices, for efficiency.

So beginning on slide 6, this provides an overview of the structure of the rule. There are five subparts of the new proposed rule. Subpart A addresses the purpose and definitions; Subpart B addresses record of title to Indian land, Subpart C addresses procedures and requirements to record documents, Subpart D addresses disclosing title documents and reports, and then Subpart E addresses records.

So we'll walk through each of those subparts and then open it up for questions and comments. Subpart A, purpose and definition, describes the record of title. And the record of title for Indian land is BIA's repository of title documents for Indian land. This part also describes the responsibilities for recording title documents, maintaining that record of title, and providing reports on title to Indian land.

In the definition section there are several new definitions. There are definitions for certifying officer and certified copy. These are definitions that argues pretty regularly, but has slightly different meanings, so the regulation attempts to clarify that.

A new definition for defect or title defect - IRU which is just the plain language definition, and the Office of Hearings and Appeals and probate inventory report, which are both appropriate for the probate related aspects of title. Record of title, and then region and title.

Definitions that are currently in the Part 150 that are revised or would be revised in this proposed rule, include agency to clarify that contracting and compacting tribes are included in that universe; Indian land, to limit to trust or restricted land only and we'll discuss that a little later because other categories are now addressed in another section.

The definition of recording is revised just to make it more of a straightforward definition. Title document is revised to provide examples. Title examination is revised to provide detail. And then the definition of tribe is revised to refer to the List Act of 1994.

Then certain definitions are deleted because the terms are no longer used. Those include Administrative Law Judge, Commissioner, Land, and Superintendent. Subpart B provides a new describing the purpose of the record of title and that purpose is to provide BIA with a record of title documents to Indian land as well as to provide the public with constructive notice that title documents exist. So that's important for future purchasers, creditors and other interested parties.

This section also addresses the fact that the LTRO, the Land Title Records Office, maintains the record of title. And that's - there's no change there from the current regs. But the current - the proposed reg does specify LTRO services and maintaining the record of title, to include recording title documents that are submitted by an agency - BIA agency region or OHA.

Providing certified copies of title documents that are in the record of title; examining the record of title and certifying the findings of title examinations; providing and certifying title status reports or TSRs; preparing, maintaining, and providing land status maps; providing and certifying probate inventory reports; and providing other services and reports based upon the information that's in the record of title.

The LTRO generally maintains the record of title electronically, so the proposed rule acknowledges that and provides that it's the LTRO office's responsibility to maintain the record of title under their assigned geographic area. And the list of each LTRO office's assigned geographic area is maintained on the Web site with the addresses for each LTRO office.

And while each LTRO office has primary responsibility to maintain the record of title under its assigned geographic area, it can assist in maintaining record of title for other geographic areas as needed. And that is providing the BIA director, flexibility to reallocate workload as needed, to address backlogs, etc.

Subpart C addresses recording of documents and provides that all title documents for Indian land, must be recorded. So even if the document reflects a transaction that didn't require secretarial approval such as a HEARTH lease or a service line agreement, or leases of tribal land by a 477 corporate entity under a charter or a (subleasehold) mortgage. Because all of those categories affect who's authorized to use Indian land, those also must be recorded in the LTRO even though they don't require secretarial approval.

Subpart C also provides - so this relates back to the definition of Indian land. And in the proposed rule, Indian land include sonly trust or restricted property - trust or restricted properties. So Subpart C provides that all title documents

for that trust or restricted property, must be recorded in the record of title at the LTRO.

But Subpart C now also includes that there are categories of documents that the LTRO may in their discretion, record, including documents that demonstrate rights of use, occupancy, and/or benefit of certain tribes to US government lands or other non-Indian lands, and certain documents regarding Indian lands that aren't title documents.

Subpart C also addresses how to find title documents for Indian lands, and that is to check the LTRO and then in certain circumstances also checking the federal, state and local records of title. And the requirement to record with the LTRO in the record of title, doesn't eliminate or supersede other federal statute or regulation that requires recording in other records of title like county records, for example, title documents for Indian land within the jurisdiction of the Osage Nation or other Oklahoma tribes.

Subpart C addresses the mechanics of recording title documents by providing that only an agency, region, or OHA, may submit title documents to the LTRO for recording. So landowner's name, the point of contact is the agency or region. LTRO is the designated office to record title documents but the BIA Director may delegate authority to another office by documenting the types of transactions that the delegation applies to in certain situations.

The minimum requirements for recording are set out to include a legal description and if required, the tract number, signature of the parties to the document, proper notarization of signatures if that's applicable, and then if the document isn't one of - deemed approved document, then there also needs to be a signature and citation to the authority of the approving official and the approval date.

If deemed approved documents don't obviously need the signature of the approving official but there should be a citation to the (legal) authority for the transaction to be deemed approved. The proposed rule addresses and changes a bit, how the LTRO addresses title defects. So if the LTRO discovers one or more of those minimum requirements I just stated, is missing, then the LTRO will notify the originating office and request a correction.

If the LTRO discovers that there's an error in one of those minimum requirements for recording, then LTRO will record the title document with a notation on the title and notify the originating office to request a correction. And then once that originating office corrects the error that's in the document, LTRO will remove the notation from the title. And that is a little different from how it's implemented currently.

Currently, there may be - LTRO may send the title document back to the originating office rather than proceeding with recording. And that change has been proposed in order to improve efficiency so that once a transaction is approved it gets recorded even if there is an error in the document.

So if the LTRO discovers during a title examination, that a previously recorded title document contains or creates a title defect, then LTRO will also record that title document with a notation and notify the originating office to request correction. And if a title defect is in the probate record then LTRO will notify the agency or region, to initiate a corrective action with OHA, the Office of Hearings and Appeals.

Subpart D addresses disclosure of title documents and reports. It sets out how LTRO certifies copies. And the official manner that LTRO certifies copies is by affixing an official seal on that copy. And that seal means that the copy is

a true and correct copy of the recorded title document. This subpart also sets out the reports that LTRO provides to include certified reports such as the title status report, land status map and probate inventory report, and uncertified reports based on information in the record of title.

Subpart D sets out who can request and receive copies of title documents or LTRO reports. And there are basically three categories of individuals including owners of interest in Indian land for the Indian land which they're seeking copies related to the tribe with jurisdiction or anyone who's leasing, using, or consolidating Indian land or applying to do so.

And those categories come from the Indian Land Consolidation Act as amended by the American Indian Probate Reform Act. All others must file a Freedom of Information Act request for the information. And individuals can request copies or LTRO reports from any region or agency office. So the region or agency office is still the primary liaison to landowners.

In order to request title documents there's a list of information that an individual or representative must provide. Basically, someone should provide their name and date of birth or ID number if they're inquiring about their own interest. Or they can provide the name of the reservation where the land is located, and either the tract number or legal description.

Or they can provide the agency name and either the tract number or legal description. Or they can just provide a legal description of the tract or a title document pertaining to the tract or the allotment number including the tribe or land area code, or the name of the original allottee. So there are several ways that someone can identify for the region or agency and LTRO, what land they're seeking information for.

And then persons who - or entities who are leasing, using or consolidating Indian lands, or applying to do so, also have to provide some documentation that they're entitled to copies or LTRO reports because they fall into that category.

Another new item that is proposed is for LTRO to charge a fee for each copy of a recorded title document. But the regulation provides the LTRO will not charge a fee to Indian landowners or their legally authorized representatives, for copies of any title documents or reports for the Indian lands in which they own an interest.

Otherwise the fee rate is established by 43 CFR Part 2 Appendix A which is the Freedom of Information Act or FOIA, fee schedule and basically, that schedule provides a fee of 15 cents per each single cited page. And the regulation provides the LTRO can waive all or part of the fees in its discretion, but any paid fees are nonrefundable. And if you access the presentation, you'll see a screenshot of the fee schedule that is Appendix A to Part 2.

Subpart E, the last subpart, addresses records and ownership of records. Basically, LTRO records are federal property, the property of the United States if they're made or received by DOI or a contracting/compacting tribe in conduct of a federal trust function. Or if they evidence the organization functions, policies, decisions, procedures, operations or other activities undertaken in performance of the federal trust function.

Other records that a tribe or tribal organization makes or receives in its conducting business with the department, are the tribe's property. For records that the United States owns, those federal records, tribes, tribal organizations

and any other organization that makes or receives records that the US owns, has to preserve those records in accordance with the Federal Records Act.

And then for records made or received in the conduct of business with the department that the tribe owns, the tribe or tribal organization should preserve those records for the period of time authorized by the archivist of the United States, for similar DOI records under the Federal Records Act.

So that is the proposed rule in a nutshell. Comments are due February 9 of this year. And we're requesting comments be emailed to Consultation@BIA.gov or submitted through the Regulations.gov portal. We have a goal of publishing a final rule in late spring. But of course, that depends on the extent and complexity of the comments that we receive.

So with that, I would like to open it up to questions and comments. We overall, have a goal of improving efficiency in the operations of LTRO and basically, just modernizing the regulations so that it reflects current processes. But we want to make sure that this rule is workable and usable for our tribal partners and - as well as BIA of course. So with that, I'd like to open it up for input.

Coordinator: Thank you. To ask a question, please press star 1. Please ensure that your phone is unmuted and record your name clearly when prompted. And to withdraw your request, please press star 2. No questions on the phone at this time.

Elizabeth Appel: We're especially interested in folks who - well we want this regulation to be a framework that's feasible for everyone. So we're especially interested in folks in Alaska and Oklahoma as well as across the country, to make sure that it's a

usable regulation for you. So if you have any questions or concerns, please don't hesitate to raise them here.

Coordinator: No questions on the phone at this time.

Elizabeth Appel: Okay. Well we do have another session scheduled for Thursday, same time. So you have some time to think about questions if you want to join on Thursday, too. We'll be going through the same presentation on Thursday. And of course, there's also the opportunity to provide written comments. But we'll give it just a couple more minutes in case anybody thinks of a question they'd like to ask today.

(Debbie) or Rick, do you have anything you'd like to share before we close out?

Johnna Blackhair: Liz, this is Johnna.

Elizabeth Appel: Oh, Johnna, great you're back.

Johnna Blackhair: Yes. So I'd like to share, you know our mission within the Office of Trust Services in support of our field operations and modernizing our system as well as providing opportunity to tribes and our workforce out there, to work in our modernized system. Our TAAMS system is very important in tracking and monitoring - and making sure that we have our trust transactions processed through this system and expediting those transactions for the benefit of our tribes and tribal members to access housing and other types of opportunities.

And more so than any time in history, we've needed to go digital and modernize our system in this pandemic. And so the environment that we're in right now has provided us an opportunity to work a lot quicker to try to get to

that platform for the convenience of our tribes and our tribal nations in coordination with them. So it's important that we hear back from you all regarding your comments, concerns about these proposed rules that are going to be written and shared with you all.

It's a high level effort for us to make sure that these regulations are updated in a manner that is going to provide guidance for us for the next 100 years. You know, or in further - as long as it takes, you know, to adapt and modernize our processes, our business flows, our communications to support tribes and tribal governments and tribal members.

And achieving this with our staffing and our locations that are out there throughout the 12 regions, standardizing our systems and our processes and our approaches, is a high priority for us. And because these haven't been updated for the last 40 years, you know, we've been out of compliance with them.

And just wanting to make sure that we have everything in order so that we can streamline these processes to effectively serve our tribal nations. (Debbie) and Rick, if you have something to add while we wait for questions. If there's any questions or comments, please ask them now. Or provide them to Liz through the guidance she provided, and we can address them after the consultation is over.

Rick Zephier: Yes, Johnna, this is Rick. I guess my only comment would be that, you know, given that it's been 40 years since these have been updated, there are a lot of changes that needed to be made and lots of updates went out. Different technology world these days and lots of processes and business rules are going to be updated in the - well, hopefully in the near future, but we'll see how many we run into that - how many priorities we run into first.

But it's going to be a challenge, but I know working with the LTROs and the managers, that we can accomplish that.

Johnna Blackhair: Thank you, Rick. (Debbie), do you have anything to share? (Debbie) has a wealth of experience in LTRO, in various capacities, and I'm thankful that she's with us on this team, to provide these updates and a path forward.

(Debbie Cobrik): All right. Thank you, Johnna. That's just what I was going to point to. After having been in an LTRO environment as a staff member and then as an LTRO manager, to have these regulations updated now after 40 years, is a good thing to be able to see that we've been able to move forward and get to this with our new automation and using these rules to help LTROs better align their work.

And also for field offices to have a good understanding of what role the LTRO plays and what happens and doesn't happen when it comes time for documents to be recorded, or how to report to be issued for them. So this is a really good opportunity that we've been able to get these proposed regulations out for everyone's comments.

And hopefully - I look forward to hearing some comments going forward for this, and any other ideas that others may have that we may not have included here. So thank you.

Johnna Blackhair: So initially I asked for comments or questions from tribal leaders. Are there tribal LTRO or program managers that would like to ask something regarding these rules?

Coordinator: As a reminder, to ask a question, please press star 1. The first question comes from (Megan Starling). Your line is now open.

(Megan Starling): Oh, I withdraw my question. Thank you.

Coordinator: Next question comes from (Jacob Bradford). Your line is now open.

(Jacob Bradford): Hi, yes. This is (Jacob Bradford), LTRO Program Manager for (Unintelligible) Indians out of Palm Springs. This question is in regards to 150.3, defining inherently federal function.

Elizabeth Appel: Hi (Jacob), yes. We currently do not have a definition in the proposed rule for inherently federal function. That is a category that solicitors determine on a case by case basis, forum what I understand. And I don't know, has anyone from the Office of Solicitor joined us yet?

Conor Cleary: Yes. I have. This is...

Elizabeth Appel: Oh great.

Conor Cleary: Conor Cleary.

Elizabeth Appel: Hi Conor.

Conor Cleary: From the Office of the Solicitor. And Liz is correct, the determination of an inherently federal function is done on a case by case basis, depending on the context in which it is used. And so the definition is not ordinarily put in the regulations, to avoid potential confusion, based on a variety of contexts in which it can come up.

Instead, when the situation presents itself and analysis is done to determine whether or not the function in question is one that is inherently federal, rather

than trying to prognosticate from the beginning about what is and isn't inherently federal and potentially categorizing something that shouldn't be or missing something that should be.

(Jacob Bradford): Okay. Thank you. I have another question. This is in regards to 150.303, who may request and receive copies of (TAO) documents. This is in regards to tribes with jurisdiction over the Indian land may request documents or reports for Indian lands subject to the tribe's jurisdiction.

The question is posed about allotted lands. The tribes technically have jurisdiction over allotted lands. Would they be able to obtain records or would - should tribal LTROs or LTROs be applying the Privacy Act towards that to ensure that certain financial records, you know, are not released?

Elizabeth Appel: So that's an interesting question because that category comes straight from (APRA). I guess I defer against, to the Office of Solicitor on how that balance happens with the Privacy Act and (APRA).

Conor Cleary: Yes. I appreciate the question. And it's certainly something that we will take a look at and make sure that people are being able to access necessary records without disclosing something that would be in violation of the Privacy Act. So I appreciate flagging that issue and it's something that, you know, will be noted and we can explore to make sure that we harmonize this rule with the requirements of the Privacy Act going forward.

(Jacob Bradford): Okay, thank you. And I mean reading that section it could be as easy as just repeating that first statement in each, A, B and C, just stating that they're all subject to the Privacy Act.

Elizabeth Appel: Thank you.

Coordinator: No further questions on the phone at this time.

Elizabeth Appel: Okay, well just as a reminder, if you'd like to make a question or comment press star 1 I believe. We'll give it just another minute in case anyone else has a question. Operator, do we have any other questions or comments?

Coordinator: Yes. We have a question from (Jacob Bradford). Your line is now open.

(Jacob Bradford): Thank you. Yes, this is a question for 150.304, where do I request copies of (TAO) documents or reports form the LTRO? It's stating here you can request documents from other regions or agencies for (TAO) records. That's a cause of concern potentially, for properly vetting the requester. You know, when you're working with a local agency you usually know who these individuals are who are requesting, and when they are, you know, are a different location maybe certain records potentially could be released that shouldn't be released.

And maybe it should always be deferred initially to - or stated it should be deferred to the local agency first and then, you know, then to the other agencies if the local one isn't able to perform that function for them.

Elizabeth Appel: Thank you for that suggestion.

Coordinator: No more questions on the phone.

Elizabeth Appel: Are there any comments or suggestions?

Coordinator: No questions or comments on the phone at this time.

Elizabeth Appel: Okay. I think we'll go ahead and close it out. I want to thank everyone for joining us. And I'll make this the last opportunity if you want to make a comment today that - to press star 1. But without that, then we can go ahead and close it out.

I hope that everybody is staying safe. And again, there's a second session scheduled for Thursday this week at the same time. Details are on the Web site that I provided earlier, as well as in the federal register publication of the proposed rule. And I encourage you to submit written comments to Consultation@BIA.gov. Johnna, did you have any closing remarks?

Johnna Blackhair: Yes. Thank you for your time and attention and having your participation in this rulemaking process, your comments, suggestions are valued and appreciated. If you can submit those we would be able to continue on and get this out. The other thing is as soon as we're able to finalize this tool, then we'll incorporate all of the information in the handbook and provide training.

We've been doing virtual training for the various trust programs, especially the Division of Real Estate Service. And we'll be posting some of those activities on our Web site as well. So be looking forward to having you all participate in that to help you with your transactions for your locations.

So thank you all and have a good day.

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