

I write to comment about proposed rulemaking for 45 CFR Part 16.13. Although the proposed purpose of the proposed rule is to reflect the change in authorization made by the Tribal Law and Order Act of 2010, I disagree that it reflects the change in authorization made by the Tribal Law and Order Act of 2010. As the Congressional Record from August 2, 2010, this public law is to protect Indian arts and crafts through the improvement of applicable criminal proceedings. The proposed rule change here seeks to change the purpose, definitions, and authorized representations by the current law. However, this seems to be outside of the enabling act and therefore outside of Congress's intent with this law.

As the agency's own background section provides, Congress enacted TLOA in 2010. This expanded the authority of tribal courts to impose longer durational sentences for multiple charges. Further, Congress ensured that the individual defendant would be provided a defense attorney at the expense of the tribal government. Public Law 11-211, Tit. II, Subtitle C, § 234(c)(2), 124 Stat. 2280.

Although the agency purports that many criminal cases are viewed as basically civil in nature, the two are distinguishable. Criminal cases impose sentences, such as where the tribal court has authority to impose up to a 9 year sentence for multiple offenses, which is not Congress's intent. This proposed rule change seeks to limit agency action to civil cases, when such agency action would be an ultra vires violation. Congress did not give the Legal Services Corporation such discretion with the TLOA in 2010.