



[4310-4J-P]

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Parts 81 and 82**

[BIA-2014-0006; K00103 12/13 A3A10; 134D0102DR-DS5A300000-DR.5A311.IA000113]

**RIN 1076-AE93**

**Secretarial Election Procedures**

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

**ACTION:** Proposed Rule.

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**SUMMARY:** The Bureau of Indian Affairs is proposing to amend its regulations governing Secretarial elections and procedures for tribal members to petition for Secretarial elections. This proposed rule reflects changes in the law and the requirement that regulations be written in plain language.

**DATES:** Comments must be received on or before December 17, 2014. See the SUPPLEMENTARY INFORMATION section of this document for dates of tribal consultations.

**ADDRESSES:** You may submit comments by any of the following methods:

-Federal rulemaking portal: <http://www.regulations.gov>. The rule is listed under the agency name “Bureau of Indian Affairs.” The rule has been assigned Docket ID: BIA-2014-0006.

-E-mail: [laurel.ironcloud@bia.gov](mailto:laurel.ironcloud@bia.gov). Include “Part 81” in the subject line of the message.

-Mail or hand-delivery: Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, Mail Stop

4513-MIB, Washington, DC 20240.

Comments on the Paperwork Reduction Act information collections contained in this rule are separate from comments on the substance of the rule. Submit comments on the information collection requirements in this rule to the Desk Officer for the Department of the Interior by e-mail at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or by facsimile at (202) 395-5806. Please also send a copy of your comments to [laurel.ironcloud@bia.gov](mailto:laurel.ironcloud@bia.gov).

See the SUPPLEMENTARY INFORMATION section of this document for locations of tribal consultation sessions.

**FOR FURTHER INFORMATION CONTACT:** Laurel Iron Cloud, Chief, Division of Tribal Government Services, Central Office, Bureau of Indian Affairs at telephone (202) 513-7641.

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

## **SUPPLEMENTARY INFORMATION**

### **I. Background**

The Bureau of Indian Affairs (BIA) is amending 25 CFR parts 81 (Secretarial Elections) and 82 (Petitioning Procedures), combining them into one Code of Federal Regulations part at 25 CFR part 81. The Secretarial Elections regulations were originally adopted in 1964, and the Petitioning Procedures regulations were originally adopted in 1967. *See* 29 FR 14359 (October 17, 1964); 32 FR 11779 (August 16, 1967). The Department has not updated either of these regulations since 1981. *See* 46 FR 1668 (January 7, 1981).

A Secretarial election is a Federal election conducted by the Secretary of the Interior (Secretary) under a Federal statute or tribal governing document under 25 CFR part 81. *See*

*Cohen's Handbook of Federal Indian Law* section 4.06[2][a]-[b], at 286-297 (Nell Jessup Newton ed., 2012). *See also Cheyenne River Sioux Tribe v. Andrus*, 566 F. 2d 1085 (8th Cir. 1977), *cert. denied*, 439 U.S. 820 (1978). The proposed rule:

- Responds to the amendments made to section 16 of the Indian Reorganization Act (IRA) (June 18, 1934, 48 Stat. 984) (25 U.S.C. 476), as amended, which established time frames within which the Secretary must call and conduct Secretarial elections and provided that all elections will be handled by mailout ballot unless polling places are expressly required by the amendment or adoption article of the tribe's governing document.
- Responds to the amendments made to Section 17 of the IRA by the Act of May 24, 1990 (104 Stat. 207) (25 U.S.C. 477) under which additional tribes may petition for charter of incorporation and removes the requirement of an election to ratify the approval of new charters issued after May 24, 1990, unless required by tribal law.
- Reflects the 1994 addition of two subsections to section 16 of the IRA by Technical Corrections Act of 1994 (108 Stat. 707)(25 U.S.C. 476(f) & (g)) that prohibit the government from making a regulation or administrative decision "that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes."

When Congress enacted Oklahoma Indian Welfare Act (OIWA) in 1936, the language it used to guarantee the right of tribes to organize and adopt constitutions and bylaws was different

from that used in the IRA. The OIWA language requires the Secretary to approve the constitution before it is submitted to the tribal membership for a vote to ratify it. These regulations reflect the difference in language between the IRA and the OIWA.

The proposed rule includes language clarifying that a tribe reorganized under the IRA may amend its governing document to remove the requirement for Secretarial approval of future amendments. Once the requirement for Secretarial approval is removed through a Secretarial election, Secretarial approval of future amendments is not required.

The proposed rule also clarifies that the Secretary will accept petitions for Secretarial elections only from federally recognized tribes included on the list of recognized tribes published by the Secretary pursuant to section 479a-1.

## **II. Comments from Tribal Representatives**

As discussed in section III of this document, we held several tribal consultation sessions on draft regulations addressing Secretarial elections and petitioning procedures. The following summarizes comments received during that consultation process.

### **Definitions**

Several tribes questioned the definition of “Indian” included in the consultation draft. Because the term is not used in the body of the regulation other than as defined in the IRA, we have deleted this definition. We have also clarified the definition of “tribe” as those federally recognized tribes included on the list of recognized tribes published by the Secretary pursuant to Section 479a-1.

One tribe questioned the definition of “member” because the consultation draft included an additional provision stating that, in the absence of the tribe’s written criteria for membership, a member is a person the tribal members recognize as belonging to that tribe. The tribe noted

that there may not be agreement among tribal members as to who belongs to the tribe. For this reason, we deleted that portion of the definition, so that a member is a person who is duly enrolled in the tribe.

One tribe suggested adding a definition of “notary.” We were unable to locate a definition of this term in other regulations and determined that the term is self-evident. This tribe also asked if a tribe can enact an ordinance authorizing people to become notaries, rather than being confined to using State-authorized notaries. Tribes presumably have the inherent power to create notary regimes. If a tribe has established an adequate regulatory framework to ensure the integrity of their notary process, we would approve use of the tribe’s notaries in lieu of other established notaries. If a tribe has a question about whether its notary process is adequately regulated, it should contact us.

We received a few comments asking about the definition for “reorganized tribe” in the consultation draft. Under the consultation draft, “reorganized tribe” would mean a tribe whose members have adopted a governing document under a Federal statute.

Tribes also requested clarification of the definitions of “reservation” and “Rancheria.” The proposed rule deletes the definition of “Rancheria” because it is not used in the body of the regulation. The proposed rule deletes the definition of “reservation” because its meaning is self-evident where used.

Several tribes noted there is no definition for “resident.” We did not define this term because it is not used in the regulation. A tribe asked how tribal governing document’s definitions of residency will affect who may vote in a Secretarial election. We have clarified at § 81.8 of the proposed rule when tribal governing document qualifications (such as residency) for voting govern who may vote in a Secretarial election.

### **Tribal Choice to Require Secretarial Approval**

One tribe asked about the consequences to a tribe of removing the requirement for Secretarial approval of future amendments from its governing document. As explained by a Federal representative at the consultation, removing the requirement for Secretarial approval of future amendments means that Secretarial approval will no longer be required for additional amendments to the tribe's governing document. .

One tribe asked whether a tribe that has reorganized under the IRA and decides to remove the requirement for a Secretarial election must hold a Secretarial election to remove that requirement. The tribe must hold a Secretarial election to remove the requirement for a Secretarial election from its governing document if a tribal law or Federal statute requires such an election. Section 81.2(h) of the proposed rule addresses this issue.

### **Who May Vote in a Secretarial Election**

Several tribes asked questions regarding who may vote in a Secretarial election. For example, at least one tribe asked for language stating that the tribe's governing documents may establish eligibility for voting. Secretarial elections are Federal elections, and, as such, anyone who is 18 years of age or older and otherwise qualified is eligible to vote, even if the tribal governing document requires voters to be 21 to be eligible to vote in tribal elections. The 26<sup>th</sup> Amendment to the Federal constitution lowered the minimum voting age for Federal elections from 21 to 18. This provision is at § 81.9 of the proposed rule.

Another tribe asked under what circumstances only the class of citizens who voted on the original tribal charter or governing document may vote. If the tribe's governing documents do not establish qualifications for voting, then the only members who may vote are those who meet

the same qualifications as those entitled to vote in the Secretarial Election that effected the tribe's reorganization.

A few tribes noted that there are no provisions for voting by tribal members who are serving in the military, at college, or incarcerated. These individuals may be eligible to vote by mail or by absentee ballot if they otherwise meet the requirements of § 81.9 of the proposed rule.

### **Absentee Voting**

Several tribes asked about who may vote by absentee ballot. The proposed regulation provides that all Secretarial election voting is to be done by mail with use of a mailout ballot, except where the amendment or adoption articles of the tribe's governing document require in-person voting. (*See* § 81.35 of the proposed rule.) If polling places are required, an absentee ballot may be requested.

A tribe asked that the regulations specify that voters can request a new absentee ballot, if necessary. *See* § 81.40 of the proposed rule.

A tribe asked that the regulations specify whether voters receiving an absentee ballot may choose to vote in person. *See* § 81.40 of proposed rule.

A tribe asked if the envelope for absentee ballots will be pre-addressed and have prepaid postage. The proposed regulations clarify that the envelope will be pre-addressed but will not have prepaid postage. *See* § 81.23 of proposed rule.

### **Registered Voters and Registration to Vote**

Tribes asked for clarification on the "registered voter" definition and its difference from "eligible voter." We simplified these definitions and explain the registered voters list further in §§ 81.26 through 81.32 of the proposed rule. A tribe also asked about the definition of "qualified

voter” in the consultation draft. We have deleted the definition of “qualified voter” because it was unnecessary.

A few tribes asked whether the registration process is required and noted that it is a task for voters to register for Secretarial elections in addition to other elections. Section 81.29 describes why the Registered Voters List is necessary.

A tribe asked what happens if the tribe does not have a registration process. The Secretarial Election Board is responsible for the registration process for Secretarial elections.

### **Request for Secretarial Election**

The consultation draft of the regulations stated that the tribe must provide an “appropriate request” to request a Secretarial election. A tribe requested clarification of that definition. The proposed regulation instead uses the term “tribal request” and clarifies what qualifies as such a request at § 81.4.

Tribes also questioned the procedures set out in the consultation draft, which included an initial request for election and then a final request for election, and the timing of those procedures. The proposed rule simplifies the process by requiring only one request for Secretarial election.

### **Ballots**

There were several questions on the different types of ballots. The consultation draft had mentioned spoiled, damaged, mutilated, valid and invalid ballots. We determined that the only necessary category is “spoiled” ballots and describe the effect of a spoiled ballot in Sections 81.39 and 81.40. (See definition for “spoiled” ballot in § 81.4.)

### **Timelines**

One tribe asked what a tribe’s recourse is if BIA does not act within the 90-day deadline

for calling and holding an election on a constitutional amendment. If BIA fails to act within the 90-day deadline, the affected tribe may bring suit, after exhausting its administrative remedies, if any, to compel agency action under the Administrative Procedure Act.

The consultation draft included a provision that stated that if BIA failed to act on an authorization to conduct an election within 90 days, then the authorization is considered void. Several tribes commented that this expiration punishes the tribe for BIA's failure to act. Since the tribal representatives on the Secretarial Election Board charged with the responsibility for calling and holding the election outnumber the BIA representative, the expiration of the authorization was not intended to punish the tribe in any way but rather simply to ensure that the tribal request had not become stale. The legal authority to call and conduct a valid election does not disappear after 90 days so we have deleted this provision.

A tribe noted that the regulations do not hold the Secretarial Election Board accountable for holding the election within 90 days. The deadline for holding an election is established by statute; the proposed rule does not restate the deadline, but the Secretarial Election Board remains subject to it.

Several tribes asked for clarification on the time frame in which results of an election may be challenged. Section 81.43 of the proposed rule clarifies that challenges must be received within three days (which are defined to be calendar days) after the Certificate of Results of Election is posted. If the third day falls on the weekend or a holiday, the challenge must be received by the close of business (COB) the next business day.

One tribe suggested that three business days, rather than calendar days, be the time frame allotted for challenges. Another tribe stated that indicating business days in some provision but calendar days in others is inconsistent and may result in confusion. For this reason, the proposed

rule counts all days as calendar days.

Several tribes had questions about the consultation draft's timeframes with regard to the 90-day deadline for calling and holding an election for an amendment, and the 180-day deadline for calling and holding an election for a new proposed governing document, including an amendment to a governing document in the nature of an entire substitute, or revocation of a governing document. These timelines are statutorily established (25 U.S.C. 476(c)(1) and are reflected in the regulation. (*See* § 81.19(a) of proposed rule.)

### **Secretarial Election Board**

Several tribes asked questions regarding the Secretarial Election Board. One tribe asked whether there are any restrictions on who may be appointed to the Secretarial Election Board. The only restriction is that those persons be members of the tribe with the exception of the Chairman of the Secretarial Election Board, who must be a BIA employee.

Another asked who makes the determination as to who serves on the Secretarial Election Board. The Authorizing Official appoints a BIA employee as the chair of the Secretarial Election Board. The tribal governing body chooses at least two tribal members to serve on the Secretarial Election Board. If the tribe declines to appoint two tribal members then the Local BIA Official would make the appointments.

A tribe asked for clarification on whether the chair is Federal or tribal official. The Authorizing Official will appoint a BIA employee to serve as the Federal chair of the Secretarial Election Board. (*See* § 81.19(b) of proposed rule.) This tribe also asked whether there are limits to the appointment. Because the Secretarial Election Board is established for a single Secretarial election, it dissolves after it completes all the duties associated with that election. The tribe also asked for clarification on whether "recognized governing body" means the governor or the tribal

council. “Recognized governing body” refers to the representative body that has legislative authority. Ordinarily, it would be neither the tribal governor, chief, nor chair; nor would it be the entire adult membership of the tribe.

One tribe asked for clarification on the Secretarial Election Board’s duties. Duties are clarified in § 81.22 of the proposed rule.

One tribe asked what the criteria are for the Board to deny an applicant status as a registered voter. The Board may deny an applicant registered voter status only if the applicant does not meet the requirements to cast a vote or if the registration form was not submitted before the deadline.

### **Privacy Concerns**

Several tribes expressed concern about the privacy of individuals whose names are listed on the registration list, because the registration list is posted. The proposed rule provides that the registration list contains only the individuals’ names and voting districts, if applicable. We believe that this information is the minimum necessary to a meaningful opportunity to challenge the eligibility of a voter and therefore does not constitute an unwarranted intrusion into the individual’s privacy.

Several tribes asked what happens to election information after the election is closed and who has access to the information. Sections 81.45(d) and 81.50(d) establish that BIA will forward certain documents to the tribe and retain a copy of records as required by the Federal Records Act. Those records may be subject to exemptions from the Freedom of Information Act for personal privacy and confidentiality. The records retained by the BIA will be available for inspection and copying in accordance with the Freedom of Information Act and the Privacy Act.

Another tribe expressed concern about the Secretarial Election Board keeping registration

packets confidential. The registration packets contain general election information that is sent to all tribal members 18 years of age or older at their last known address. These packets are not confidential. However, the returned registration forms contain personal information that is covered by the Privacy Act and may be subject to exemptions from the Freedom of Information Act for personal privacy and confidentiality.

### **Challenges**

Several tribes asked who may challenge the Registered Voters List. Under § 81.32 of the proposed rule, any tribal member may challenge the inclusion or exclusion of a name from the Registered Voters List as long as he or she provides supporting documentation for the challenge.

A tribe asked for clarification on the time period for challenges to the Registered Voters List. The Secretarial Election Board establishes the time period for challenges. (*See* §82.33 of proposed rule.)

A tribe asked how much time the election board has to rule on a challenge. The proposed rule, at § 81.33, clarifies that the Secretarial Election Board has three days after the challenge deadline to rule on the challenge.

### **Petitioning**

Several tribes questioned why petitions had to be signed by at least 60 percent of the tribe's eligible voters where the tribe is not reorganized (i.e., where the tribe is adopting a governing document under Federal statute for the first time). The 60 percent requirement was adopted in 1981. *See* 46 FR 1669 (January 7, 1981). We have re-examined this requirement in light of the questions raised at consultation, and are now proposing that petitions must be signed by at least 20 percent of the tribe's eligible voters where the tribe is not reorganized. The rationale for lowering the threshold to 20 percent is that a smaller percentage should be entitled

to raise the question to a vote by petition than the percentage required to vote for an election to be valid. The IRA requires only 30 percent of eligible voters to vote for an election to be valid. *See* 25 U.S.C. 478a. We are specifically seeking comment on this proposed revision.

Several tribes objected to posting the petition because individuals' addresses are included on the petition. Addresses are redacted before posting.

Several tribes asked for additional information on what makes a petition valid and/or a checklist to ensure that petitions are complete. Sections 81.58 and 81.65 explain how the BIA reviews petitions.

One tribe asked for confirmation that the Authorizing Official's determination as to the validity of the petition is final for the Department of the Interior. For the purposes of calling and conducting the Secretarial Election the regulations establish that this determination is final at § 81.65.

### **Other Comments**

One tribe stated that 25 U.S.C. 476(h), which establishes that each tribe has inherent sovereign power to adopt governing documents under procedures other than those specified in the IRA, is not expressly addressed in the regulations. The regulations govern procedures for Secretarial elections; they do not diminish tribes' inherent sovereign power to adopt governing documents when Secretarial elections are not required.

One tribe stated that applicability of the regulations needs to be clearer. We have attempted to clarify applicability at § 81.2 of the proposed rule.

One tribe asked for clarification on when technical assistance is available for the tribe and for petitioners. The proposed rule clarifies this availability in § 81.6.

Several tribes requested additional information on charters. We clarify the applicability

of the regulations to charters in § 81.2.

One tribe asked whether Secretarial elections must follow tribal law. Secretarial Elections are governed by Federal law. The Secretary shall defer to specific variations noted in the adoption or amendment articles of a tribe's governing document that are not otherwise inconsistent with Federal law.

A tribe expressed concern about how to prevent one individual from casting multiple votes. Similarly, a tribe asked whether votes hand-delivered by one individual on behalf of several need to be scrutinized. The proposed regulation includes several safeguards to ensure that each individual receives only one ballot, and mailout or absentee ballots require the registered voter to sign a certification on the back of the return envelope.

A tribe suggested the regulations include consequences for violating the ban on electioneering. Tribes may enact and enforce tribal law governing the orderly conduct of elections, which would apply to Secretarial elections to the extent they do not conflict with these regulations. Interference in a Secretarial election may be a violation of Federal civil rights and voting laws and punishable under Federal law, as well as tribal law.

A tribe asked what happens if the Secretarial Election Board itself is involved in voter fraud. Anyone who commits fraud in connection with the conduct of a Secretarial election may be subject to prosecution under Federal law. If actual election fraud makes it impossible to determine the results of the election, the Secretary must disapprove the election results and call for a new election as soon as corrective action can be taken. Election fraud which does not change the ultimate results of an election does not require disapproval of the election results. For example, if 80 of 100 eligible voters cast votes in the affirmative and election fraud was shown with regard to 20 votes, the Secretary would not need to disapprove the election as those 20 votes

would not change the ultimate results of the election.

A tribe suggested that the regulations address assistance for illiterate voters. The proposed regulations describe the types of assistance available at § 81.12; an illiterate voter may request reasonable accommodations, which may include having the interpreter read to the voter, audio aids, or some other accommodation.

One tribe stated that it should be a requirement to hold education meetings with the public regarding each Secretarial election and the process. We have considered this comment but determined it is not appropriate to include an express requirement for educational meetings in the regulation because of the wide variety of governing documents and possible amendments that tribes may want to consider. We strongly encourage tribes, however, to conduct their own voter education programs.

A few tribes asked that the proposed rule include a cross-reference to 25 CFR 1.2, which allows for waivers of requirements when in the best interest of the Indians. These regulations are intended to establish procedures in the conduct of Federal elections that by statute include specific deadlines. Therefore, the Secretary's authority to grant waivers would be limited. It is not anticipated that waivers would routinely be appropriate and the regulations themselves are being drafted so that they are effective in the vast majority of cases; thus, 25 CFR 1.2 is not cross-referenced.

We received a number of suggestions for items to add to a handbook including: how to verify or authenticate signatures, what are acceptable forms of registration (email, mail, etc.), how the Secretarial Election Board handles hand-delivered ballots, a chart outlining the petitioning process and the Secretarial election process, template letters regarding the status of the request, checklists to help meet timeframes, and information on challenges to petition

signatures based on an allegation of forgery. We will consider including these items following finalization of the regulations.

### III. Consultations

#### A. Past Consultations

Efforts to revise this regulation date back to 1992, when the first consultations were held. The Department most recently hosted a set of tribal consultation sessions in 2009 and 2010. These sessions were held on December 1, 2009, in Anchorage, Alaska; Brooks, California, on January 12, 2010; Minneapolis, Minnesota, on January 20, 2010; Oklahoma City, Oklahoma, on January 26, 2010; Pala, California, on February 2, 2010; and Albuquerque, New Mexico, on February 4, 2010. The Department also accepted written comments to the regulations. The Department reviewed the comments and made significant changes to the draft in response to tribes' comments and suggestions. Publication of this proposed rule triggers an additional tribal consultation period where tribes may submit additional comments orally at tribal consultation sessions, or in writing.

#### B. Future Consultations

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

<b>Date</b>	<b>Time (All Times Local)</b>	<b>Location</b>	<b>Venue</b>
Sunday, October 26, 2014	1 p.m. – 4 p.m.	Atlanta, GA	National Congress of American Indians (NCAI) Annual Convention Hyatt Regency Atlanta 265 Peachtree St NE Atlanta, GA 30303
Tuesday, November 18th, 2014	8:30 a.m. – 12 p.m.	Oklahoma City, OK	Embassy Suites Oklahoma City Airport 1815 S. Meridian Ave. Oklahoma City, OK 73108

The Department will provide tribes with notice of any additional tribal consultation sessions.

#### **IV. Procedural Matters**

##### **A. Regulatory Planning and Review (E.O. 12866)**

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations and provide greater notice and clarity to the public.

##### **B. Regulatory Flexibility Act**

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). It does not change current funding requirements or regulate small entities.

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

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory

Enforcement Fairness Act. It will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. Secretarial elections are funded by the BIA. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

**D. Unfunded Mandates Reform Act**

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

**E. Takings (E.O. 12630)**

Under the criteria in Executive Order 12630, this proposed rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable "taking." A takings implication assessment is not required.

**F. Federalism (E.O. 13132)**

Under the criteria in Executive Order 13132, this proposed rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule clarifies the procedures for conducting a Secretarial election, which is a Federal election, for federally recognized Indian tribes.

**G. Civil Justice Reform (E.O. 12988)**

This proposed rule complies with the requirements of Executive Order 12988.

Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

#### **H. Consultation with Indian Tribes (E.O. 13175)**

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments," Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have held several consultation sessions with representatives of federally recognized tribes throughout the development of this proposed rule. Details on these consultation sessions and the comments received are described above.

#### **I. Paperwork Reduction Act**

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. In accordance with 44 U.S.C. 3507(d), BIA has submitted the information collection and recordkeeping requirements of this proposed rule to OMB for review and approval. The following describes the information collection requirements in each section of the proposed rule and any changes from the current rule.

Title: Secretarial elections (25 CFR part 81)

OMB Control Number: 1076-NEW

Requested Expiration Date: Three years from the approval date.

Summary: This information collection requires tribes that are requesting a Secretarial election to provide a formal request for election, including the language to be voted on and a certified list of tribal members who will be age 18 at the time of the Secretarial election and their

current addresses or a certified Eligible Voters List with addresses. This list is necessary to ensure that all eligible voters receive notice of the Secretarial election and the opportunity to register and vote in the election. This information collection also requires that tribal members who petition for a Secretarial election provide certain information in the petition, that tribal members who wish to vote in the election to register for the election, that registered voters submit a ballot to vote in the election, and that anyone wishing to challenge the results of an election provide substantiating evidence for the challenge.

Frequency of Collection: On occasion

Description of Respondents: Indian tribes, Indian tribal members.

Total Annual Responses: 252,041

Total Annual Burden Hours: 64,305 (1,280 hours for tribal submissions, 63,025 hours for member submissions)

Total Annual Cost Burden: \$ 110,880

The BIA invites comments on the information collection requirements of this proposed rule. You may submit comments to the Desk Officer for the Department of the Interior by e-mail at [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or by facsimile at (202) 395-5806. Please also send a copy of your comments to BIA at the location specified under the heading ADDRESSES.

You can receive a copy of BIA's submission to OMB by contacting the person listed in the FOR FURTHER INFORMATION CONTACT section, or by requesting the information from the Indian Affairs Information Collection Clearance Officer, Office of Regulatory Affairs & Collaborative Action, 1849 C Street, NW, MS-4141, Washington, DC 20240. You may also view the information collection request as submitted to OMB at [www.reginfo.gov](http://www.reginfo.gov).

Comments should address: (1) whether the collection of information is necessary for the

proper performance of the Program, including the practical utility of the information to the BIA; (2) the accuracy of the BIA's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

#### **J. National Environmental Policy Act**

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

#### **K. Information Quality Act**

In developing this proposed rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106-554).

#### **L. Effects on the Energy Supply (E.O. 13211)**

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

#### **M. Clarity of this Regulation**

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you believe that we have not met these requirements, send us comments by one of the methods listed in the "COMMENTS" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

#### **N. Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

We cannot ensure that comments received after the close of the comment period (see DATES) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

#### **O. Drafting Information**

The primary authors of this document are De Springer, Former Acting Chief, Division of Tribal Government Services, Bureau of Indian Affairs; Karen Ketcher, Former Deputy Regional Director, Eastern Oklahoma Region, Bureau of Indian Affairs; Suzanne Chaney, Former Community Services Officer, Southern Plains Region, Bureau of Indian Affairs; Danelle Daugherty, Deputy Regional Director for Indian Services, Great Plains Region, Bureau of Indian Affairs; and Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action – Indian Affairs, Department of the Interior.

#### **List of Subjects in 25 CFR Parts 81 and 82**

Indians—tribal government.

For the reasons given in the preamble, under the authority of 5 U.S.C. 301 and 25 U.S.C, 2 and 9, the Department proposes to amend chapter I, title 25, as follows:

1. Revise part 81 to read as follows:

## **PART 81—SECRETARIAL ELECTION PROCEDURES**

### **Subpart A – Purpose and Scope**

Sec.

- 81.1 What is the purpose of this part?
- 81.2 When does this part apply?
- 81.3 Information collection.

### **Subpart B –Definitions**

- 81.4 What terms do I need to know?

### **Subpart C – General Provisions**

- 81.5 What should a tribe do when anticipating adopting or amending its governing document?
- 81.6 What technical assistance will the Bureau provide?
- 81.7 What happens if a governing Federal statute and this part disagree?
- 81.8 Will the Secretary give deference to the Tribe's interpretation of its own documents?
- 81.9 Who may cast a vote in a Secretarial Election?
- 81.10 May a tribe establish a voting age different from 18 years of age for Secretarial elections?
- 81.11 What type of electioneering is allowed before and during a Secretarial Election?
- 81.12 What types of voting assistance are provided for a Secretarial Election?
- 81.13 May Secretarial elections be scheduled at the same time as tribal elections?
- 81.14 How are conflicting proposals to amend a single document handled?
- 81.15 Who pays for holding the Secretarial Election?
- 81.16 May a tribe use its funds to pay non-Federal election officials?
- 81.17 Who can withdraw a request for a Secretarial Election?

### **Subpart D – The Secretarial Election Process under the Indian Reorganization Act (IRA)**

- 81.18 How is a Secretarial Election requested?
- 81.19 What does the Bureau do after receiving a request for a Secretarial Election?
- 81.20 What is the first thing that the Chair of the Election Board does?
- 81.21 Who conducts the Secretarial Election?
- 81.22 How is the Secretarial Election conducted?
- 81.23 What documents are included in the Secretarial Election Notice Packet?
- 81.24 What information must be included on the Secretarial Election notice?
- 81.25 Where will the Secretarial Election Notice be posted?
- 81.26 How does BIA use the information I provide on the registration form?
- 81.27 Do I have to re-register if I have already registered for a tribal or Secretarial Election?
- 81.28 How do I submit my registration form?
- 81.29 Why does the Secretarial Election Board compile a Registered Voters List?

- 81.30 What information is contained in the Registered Voters List?
- 81.31 Where is the Registered Voters List posted?
- 81.32 May the Registered Voters List be challenged?
- 81.33 How does the Secretarial Election Board respond to challenges?
- 81.34 How are the official ballots prepared?
- 81.35 When must the Secretarial Election Board send ballots to voters?
- 81.36 What will the mailout or absentee ballot packet include?
- 81.37 How do I cast my vote at a polling site?
- 81.38 When are ballots counted?
- 81.39 How does the Board determine whether the required percentage of registered voters have cast ballots?
- 81.40 What happens if a ballot is spoiled before it is cast?
- 81.41 Who certifies the results of the Election?
- 81.42 Where are the results of the Election posted?
- 81.43 How are the results of the Election challenged?
- 81.44 What documents are sent to the Authorizing Official?
- 81.45 When are the results of the Secretarial Election final?

**Subpart E – The Secretarial Election Process under the Oklahoma Indian Welfare Act (OIWA)**

- 81.46 What should a tribe do to adopt or amend its governing document?
- 81.47 What technical assistance does the Bureau provide?
- 81.48 What does the Bureau do upon receiving the request for an Election?
- 81.49 How is the Secretarial Election conducted?
- 81.50 When are the results of the Election final?

**Subpart F –Formulating Petitions to Request a Secretarial Election**

- 81.51 What is the purpose of this subpart?
- 81.52 Who must follow these requirements?
- 81.53 How do tribal members circulate a petition to adopt or amend the tribe’s governing document?
- 81.54 What technical assistance will the Bureau provide?
- 81.55 Who may initiate a petition?
- 81.56 Who may sign a petition?
- 81.57 Who is authorized to submit a petition to the Secretary?
- 81.58 How is the petition formatted and signed?
- 81.59 Do petitions have a minimum or maximum number of pages?
- 81.60 How do I find out how many signatures are needed for a petition to be valid?
- 81.61 How long do tribal members have to gather the signatures?
- 81.62 How does the spokesperson file a petition?
- 81.63 How does the Local Bureau Official process the petition?
- 81.64 How can signatures to the petition be challenged?
- 81.65 How is the petition validated?
- 81.66 May the same petition be used for more than one Secretarial Election?

AUTHORITY: 25 U.S.C. 473a, 476, 477, as amended, and 503.

## Subpart A – Purpose and Scope

### § 81.1 What is the purpose of this part?

This part prescribes the Department’s procedures for authorizing and conducting elections when Federal statute or the terms of a tribal governing document require the Secretary to conduct and approve an election to:

- (a) Adopt, amend, or revoke tribal governing documents; or
- (b) Adopt or amend charters.

### § 81.2 When does this part apply?

This part applies only to federally recognized tribes, in the circumstances shown in the following table.

<b>If a tribe wants to...</b>	<b>And...</b>
(a) Adopt a new governing document to reorganize under Federal statute	The Federal statute requires an election before or after Secretarial approval.
(b) Adopt a new governing document to reorganize outside Federal statute	The governing document requires approval under the Secretary’s general authority to approve.
(c) Amend or revoke a governing document adopted under Federal statute	The Federal statute requires an election and approval for amendment or revocation.
(d) Amend or revoke a governing document adopted outside Federal statute	The governing document requires Secretarial approval of an amendment or revocation.
(e) Ratify a federal charter of incorporation	The charter requires Secretarial approval or is being ratified under the Oklahoma Indian Welfare Act (OIWA).
(f) Amend a federal charter of incorporation	(1) The charter was ratified before the May 24, 1990, amendments to the Indian Reorganization Act (IRA); or (2) The charter was ratified after May 24, 1990, amendments to the Indian Reorganization Act (IRA), and the charter requires a Secretarial Election to amend.
(g) Take other action	A Federal statute or tribal law requires a Secretarial Election in order to take that action.
(h) Remove the requirement for a Secretarial approval from a governing document	A Federal statute or tribal law requires a Secretarial Election in order to take that action.

### **§ 81.3 Information collection.**

The information collection requirements contained in this part are approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and has been assigned OMB control number 1076-XXX. This information is collected when, under Federal statute or the tribe's governing documents, the Secretarial Election is authorized to adopt, amend, or revoke governing documents; or adopt or amend charters. This information is required to obtain or retain benefits. A Federal agency may not collect or sponsor an information collection without a valid OMB control number.

### **Subpart B - Definitions**

#### **§ 81.4 What terms do I need to know?**

For purposes of this part:

Absentee or Mailout ballot means a ballot the Secretarial Election Board provides to a registered voter to allow him or her to vote by mail.

Amendment means any modification or change to one or more provisions of an existing governing document or charter.

Applicable law means any treaty, statute, Executive Order, regulation, opinion of the Solicitor or final decision of the Interior Board of Indian Appeals or a Federal court, which is applicable to the tribe.

Authorizing Official means the Bureau official with delegated Federal authority to authorize a Secretarial Election.

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

Cast means the action of a registered voter, when the ballot is received through the mail

by the Secretarial Election Board, or placed in the ballot box at the polling site, when polling sites are required by the amendment or adoption articles of the tribe's governing document.

Charter means a charter of incorporation issued under a Federal statute and ratified by the governing body in accordance with tribal law or, if adopted before May 24, 1990, by a majority vote in an election conducted by the Secretary.

Day means a calendar day. A Secretarial Election may be held on a Saturday, Sunday or Federal holiday.

Department means the Department of the Interior.

Director means the Director of the Bureau of Indian Affairs or his or her authorized representative.

Electioneering means campaigning for or against the adoption, ratification, revocation or amendment of a proposed governing document or a charter.

Eligible voter means a tribal member who will be 18 years of age or older on the date of the Secretarial Election.

Eligible Voters List means a list of eligible voters, including their birthdates and their last known mailing addresses. The Eligible Voters List is compiled and certified by the tribe's governing body or the Bureau if the Bureau maintains the current membership roll for the tribe.

Federal statute means the Indian Reorganization Act (IRA), 25 U.S.C. 476, 477, as amended, the Oklahoma Indian Welfare Act (OIWA), 25 U.S.C. 503, and any tribe-specific statute that requires a Secretarial Election for the adoption of a governing document.

Governing document means any written document which prescribes the extent, limitations, and manner in which the tribe exercises its sovereign powers.

Local Bureau office means the local administrative office of the Bureau.

Local Bureau Official means the Superintendent, Field Representative, or other official having delegated Federal administrative responsibility under this part.

Member means any person who meets the written criteria of and is duly enrolled with a tribe.

Petition means the official document submitted by the petitioners to the Secretary to call a Secretarial Election for the purpose of adopting or ratifying a new governing document, amending the tribe's existing governing document, or revoking the tribe's existing governing document.

Polling site ballot means the ballot the Secretarial Election Board provides to a registered voter, allowing him or her to vote when polling sites are required by the amendment and adoption article of the tribe's governing document.

Recognized governing body means the tribe's governing body recognized by the Bureau for the purposes of government-to-government relations.

Registered Voter means an eligible voter who has registered to vote in the Secretarial Election.

Registered Voters List means the list of all Registered Voters. A redacted version showing only names, and where applicable voting districts, shall be used for posting purposes.

Registration means the process by which an eligible voter is determined eligible to vote in the Secretarial Election.

Revocation means that act whereby the registered voters of a tribe vote to revoke their current governing document.

Secretarial Election means a Federal election conducted by the Secretary under a Federal statute or tribal governing document under this part.

Secretarial Election Board means the body of officials appointed by the Bureau and the tribe to conduct the Secretarial Election.

Secretary means the Secretary of the Interior or his or her authorized representative.

Spoiled ballot means the ballot is mismarked, mutilated, rendered impossible to determine the voter's intent, or marked so as to violate the secrecy of the ballot.

Spokesperson for the petitioners means a tribe's eligible voter who provides a document signed by tribal members that provides him or her authority to speak or submit a petition on their behalf.

Tribal request means a request composed of all of the following:

(1) A duly adopted tribal resolution, tribal ordinance, other appropriate tribal document requesting the Secretary to call a Secretarial Election, or, in the absence of an existing governing document or if authorized or required by the existing governing documents, a petition that has been verified by the Bureau as having the minimum required signatures of tribal members;

(2) The exact document or amended language to be voted on; and

(3) A list of all Tribal members who will be 18 years age or older within 120 days of the date of this request, submitted in an electronically sortable format with names, last known addresses, dates of birth, and voting district, if any.

Tribe means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that is listed in the FEDERAL REGISTER under 25 U.S.C. 479a—1(a), as recognized and receiving services from the Bureau of Indian Affairs.

Voting district means a geographic area established to facilitate the voting process, if required, by the amendment and adoption articles of the tribe's governing document.

### **Subpart C – General Provisions**

**§ 81.5 What should a tribe do when anticipating adopting or amending its governing document?**

The tribe should submit the proposed document to the Local Bureau Official for review and comment. Bureau personnel may help the tribal government in drafting governing documents, bylaws, charters, amendments and revocations. They will also explain the Secretarial Election process.

**§ 81.6 What technical assistance will the Bureau provide?**

(a) Upon completing the initial review of the proposed document or amendment, the Local Bureau Official will make a recommendation on the proposed document or amendment, prepare background information on the tribe, and submit to the Authorizing Official.

(b) The Authorizing Official must do all of the following:

(1) Review the proposed governing document or amendment and offer technical assistance and comments to the tribe.

(2) Consult with the Office of the Solicitor to determine whether any of the provisions of the proposed governing document or amendment may be contrary to applicable law.

(3) Notify the tribe in writing if a provision is or may be contrary to applicable law. This notification must:

(i) Explain how the provision may be contrary to applicable law; and

(ii) Be sent to the tribe promptly but in no case less than 30 days before calling the election.

(c) Once the tribe has responded to the Bureau's technical assistance, comments and notice of any provision that may be contrary to applicable law, it may submit a tribal request for a Secretarial Election.

**§ 81.7 What happens if a governing Federal statute and this part disagree?**

If a conflict appears to exist between this part and a specific requirement of the Federal statute, this part must be interpreted to conform to the statute.

**§ 81.8 Will the Secretary give deference to the Tribe’s interpretation of its own documents?**

The Secretary will give deference to the tribe’s reasonable interpretation of the amendment and adoption articles of the tribe’s governing documents. The Secretary retains authority, however, to interpret tribal law when necessary to carry out the government-to-government relationship with the tribe or when a provision, result, or interpretation may be contrary to Federal law.

**§ 81.9 Who may cast a vote in a Secretarial Election?**

<b>If the tribe:</b>	<b>Then the following individuals may cast a vote:</b>
(a) Is reorganizing under Federal statute for the first time,	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial Election; and (2) Has duly registered, regardless of residence or other qualifications contained in the tribe’s governing documents or charter
(b) Is already reorganized under Federal statute,	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial Election; and (2) Otherwise meets the qualifications established by the tribe’s governing documents or charter or, if the tribe’s governing documents and charter do not define the qualifications for voting in a Secretarial Election, then meets the same qualifications as those entitled to vote in the Secretarial Election that effected the tribe’s reorganization; and (3) Has duly registered.
(c) Is not organized under a Federal statute but tribal law requires a Secretarial Election.	Any member of the tribe who: (1) Will be 18 years of age or older on the date of the Secretarial Election; and (2) Otherwise meets the qualifications, if any, established by the tribe’s governing documents or charter or, if the tribe’s governing documents and charter do not define the qualifications for voting in a Secretarial Election,; and

	(3) Has duly registered.
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**§ 81.10 May a tribe establish a voting age different from 18 years of age for Secretarial elections?**

No. A Secretarial Election is a Federal election. According to the 26<sup>th</sup> Amendment of the U.S. Constitution, adopted July 1, 1971, all individuals 18 years of age and older must be able to vote in Federal elections.

**§ 81.11 What type of electioneering is allowed before and during Secretarial election?**

There shall be no electioneering within 50 feet of the entrance of a polling site.

**§ 81.12 What types of voting assistance are provided for a Secretarial Election?**

If polling sites are required by the amendment or adoption article of the tribe's governing document, the Chair of the Secretarial Election Board will:

- (a) Appoint interpreters;
- (b) Ensure that audio or visual aids for the hearing or visually impaired are provided;
- (c) Ensure that reasonable accommodations are made for others with impairments that would impede their ability to vote; and

(d) Allow the interpreter or Secretarial Election Board member to explain the election process and voting instructions. At the request of the voter, the interpreter or Board member may accompany the voter into the voting booth, but must not influence the voter in casting the ballot.

**§ 81.13 May Secretarial elections be scheduled at the same time as tribal elections?**

The Secretarial Election Board will, generally, avoid scheduling Secretarial Elections at the same time as tribal elections to avoid confusion. If the Secretarial Election Board decides to

schedule a Secretarial Election at the same time as a tribal election, the Secretarial Election Board must clearly inform eligible voters of any differences between the tribal election and the Secretarial Election and separate ballots must be used for each type of election.

**§ 81.14 How are conflicting proposals to amend a single document handled?**

When conflicting proposals to amend a single provision of a tribal governing document or charter provision are submitted, the proposal first received by the Local Bureau Official, if properly submitted as a complete tribal request, must be voted on before any consideration is given other proposals. Other proposals must be considered in order of their receipt if they are resubmitted following final action on the first submission. This procedure applies regardless of whether the proposal is a new or revised tribal governing document.

**§ 81.15 Who pays for holding the Secretarial Election?**

A Secretarial Election is a Federal election; therefore, Federal funding will be used to cover the cost. The Bureau will pay for the costs, unless the tribe has received funding through contracts or self-governance compacts entered into under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450f, et seq.

**§ 81.16 May a tribe use its funds to pay non-Federal election officials?**

A tribal recognized governing body may use tribal funds to compensate non-Federal personnel to protect the tribe and respond to the needs of the tribal government in the conduct of the Secretarial Election.

**§ 81.17 Who can withdraw a request for a Secretarial Election?**

The tribe or spokesperson for the petitioners may withdraw the request for Secretarial Election in the same manner in which the Secretarial Election was requested. However, the request for a Secretarial Election cannot be withdrawn after the established deadline for voter

registration.

## **Subpart D– The Secretarial Election Process under the Indian Reorganization Act (IRA)**

### **§ 81.18 How is a Secretarial Election requested?**

A tribe may make a request to the Local Bureau Official for a Secretarial Election by submitting:

- (a) A tribal request from the recognized governing body, or
- (b) A petition from the spokesperson for the petitioners.

### **§ 81.19 What does the Bureau do after receiving a request for a Secretarial Election?**

(a) Upon receiving a request for a Secretarial election, the Authorizing Official will issue a memorandum to the Local Bureau official. The memorandum will do all of the following:

(1) Direct the Local Bureau official to call and conduct a Secretarial Election by one of the following deadlines:

(i) If the tribal request is to amend an existing governing document, within 90 days from the date of receipt of the request;

(ii) If the tribal request is to adopt a new governing document (including an amendment to a governing document in the nature of an entire substitute) or to revoke an existing governing document, within 180 days after receiving the request.

(2) Include as an attachment the document or proposed language to be voted upon;

(3) Include as an attachment the Certificate of Results of Election with instructions to return it after the Secretarial Election. The Certificate shall read as follows:

#### **CERTIFICATE OF RESULTS OF ELECTION**

Under a Secretarial Election authorized by (name and title of authorizing official) on (date), the attached [insert: Governing document and Bylaws, charter of incorporation, amendment or revocation] of the (official name

of tribe) was submitted to the registered voters of the tribe and on (date) duly (insert: adopted, ratified, rejected or revoked) by a vote of (number) for and (number) against and (number) cast ballots found spoiled in an election in which at least 30 percent (or such "percentages" as may be required to amend according the governing document) of the (number) registered voters cast their ballot in accordance with (appropriate Federal statute).

Signed: \_\_\_\_\_

(by the Chair of the Secretarial Election Board and Board Members)

Date: \_\_\_\_\_; and

(4) Advise that no changes or modifications can be made to any attached document, without the Authorizing Official's prior approval.

(b) The Local Bureau Official will appoint a Bureau employee to serve as the Chair of the Secretarial Election Board and notify the tribe of the need to appoint at least two tribal members to the Secretarial Election Board. If the tribe declines or fails for any reason to make this appointment within 10 days after the notice letter is issued, the Chair of the Secretarial Election Board must appoint two representatives on the 11<sup>th</sup> day after the notice letter is issued.

**§ 81.20 What is the first thing that the Chair of the Election Board does?**

Within 5 days after the Secretarial Election Board representatives are appointed, the Chair must hold the first meeting of the Secretarial Election Board to set the election date.

**§ 81.21 Who conducts the Secretarial Election?**

The Secretarial Election Board conducts the Secretarial Election.

**§ 81.22 How is the Secretarial election conducted?**

The Secretarial Election Board:

(a) Uses the list provided in the tribal request to create an Eligible Voters List;

(b) Assembles and mails the Secretarial Election Notice Packet at least 60 days before the date of the Secretarial Election to all persons on the Eligible Voters List;

(c) Confirms that registration forms were received on or before the deadline date;

(d) Retains the completed registration form as part of the record;

(e) Develops the Registered Voters List for posting;

(f) Notes on a copy of the Registered Voters List, by the individual’s name, the date his or her ballot request was received, the date the ballot was mailed, and the date the ballot was returned; and

(g) If polling sites are required by the amendment or adoption article of the tribe’s governing document, notes on a copy of the Registered Voters List, by the individual’s name, the date his or her absentee ballot request was received, the date the absentee ballot was mailed, and the date the absentee ballot was returned.

**§ 81.23 What documents are included in the Secretarial Election Notice Packet?**

The Secretarial Election Notice Packet includes the following.

(a) Mailout Balloting	(b) Polling Sites ( if required by the amendment or adoption articles of the tribe’s governing document)
(1) The Secretarial Election notice;	(1) The Secretarial Election notice;
(2) A registration form with instructions for returning the completed form by mail;	(2) A registration form with instructions for returning the completed form by mail;
(3) An addressed envelope with which to return the completed registration form; and	(3) An absentee ballot request form with instructions for returning the completed form by mail;
(4) A copy of the proposed document.	(4) An addressed envelope with which to return the completed registration form and absentee ballot request form; and
	(5) A copy of the proposed document.

**§ 81.24 What information must be included on the Secretarial Election notice?**

The Secretarial Election notice must contain all of the following items.

- (a) The date of the Secretarial Election;
- (b) The date which registration forms must be received by the Secretarial Election

Board;

- (c) A description of the purpose of the Secretarial Election;
- (d) A description of the statutory and tribal authority under which the Secretarial

Election is held;

- (e) The deadline for filing challenges to the Registered Voters List;

- (f) The date a ballot request must be received by the Secretarial Election Board;

(g) A statement as to whether the Secretarial Election is being held entirely by mailout ballot or with polling sites, in accordance with the tribe's governing document's amendment or adoption articles; and

- (h) The locations and hours of established polling sites, if any.

#### **§ 81.25 Where will the Secretarial Election notice be posted?**

The Secretarial Election notice will be posted at the local Bureau office, if any, the tribal headquarters, and other public places determined by the Secretarial Election Board.

#### **§ 81.26 How does BIA use the information I provide on the registration form?**

We use the information you provide on the registration form to determine whether you may be register for and vote in the Secretarial Election. The registration form must include the following statements:

(a) Completing and returning this registration is necessary if you desire to vote in the forthcoming Secretarial Election;

(b) This form, upon completion and return to the Secretarial Election Board, will be the basis for determining whether your name will be placed upon the list of registered voters, and

therefore may receive a ballot, and

(c) Completion and return of this form is voluntary, but failure to do so will prevent you from participating in the Secretarial election.

**§ 81.27 Do I have to re-register if I have already registered for a tribal or Secretarial Election?**

Yes. A Secretarial Election is a Federal election and you must register for each Secretarial Election.

**§ 81.28 How do I submit my registration form?**

You must submit your registration form to the Secretarial Election Board by mail.

**§ 81.29 Why does the Secretarial Election Board compile a Registered Voters List?**

The Registered Voters List is a list of eligible voters who have registered and are, therefore, entitled to vote in the Secretarial Election. We use this list, after all challenges have been resolved, to determine whether voter participation in the Secretarial Election satisfies the minimum requirements of the tribe's governing documents and Federal law.

**§ 81.30 What information is contained in the Registered Voters List?**

The Registered Voters List must contain the names, in alphabetical order, of all registered voters and their voting districts, if voting districts are required by the tribe's governing document's amendment or adoption articles.

**§ 81.31 Where is the Registered Voters List posted?**

A copy of the Registered Voters List, showing names only, must be posted at the local Bureau office, if any, the tribal headquarters, and other public places the Secretarial Election Board designates.

**§ 81.32 May the Registered Voters List be challenged?**

(a) It is possible to challenge in writing the inclusion or exclusion or omission of a name on the Registered Voters List. The written challenge must be received by the Secretarial Election Board by the established deadline and include the following:

- (1) The individual whose name does or does not appear on the Registered Voters List;
- (2) The reason why the individual's name should or should not be included; and
- (3) Supporting documentation.

(b) Failure to register on time is not a valid basis for an individual to challenge the omission of his/her name from the list.

### **§ 81.33 How does the Secretarial Election Board respond to challenges?**

All challenges must be resolved within three days of the challenge deadline established by the Secretarial Election Board and all determinations of the Secretarial Election Board are final for the purpose of determining who can vote in the Secretarial Election.

(a) If the challenge was received after the deadline, the Secretarial Election Board must deny the challenge.

(b) If the challenge was received on or before the deadline, the Secretarial Election Board will decide the challenge by reviewing the documentation submitted. Thereafter, the Secretarial Election Board will include the name of any individual whose name should appear or remove the name of any individual who should not appear on the Registered Voters List.

### **§ 81.34 How are the official ballots prepared?**

(a) The Secretarial Election Board must prepare the official ballot so that it is easy for the voters to indicate a choice between adopting or rejecting the proposed language. Separate ballots should be prepared for each proposed amendment or a single ballot for adoption of a proposed document (with a reference to the document provided in the Secretarial Election

notice).

- (b) The following information must appear on the face of the mailout or absentee ballot:

OFFICIAL BALLOT

(Facsimile Signature)

CHAIR, SECRETARIAL ELECTION BOARD

(c) When polling places are required by the tribe's governing document, the official ballot may be a paper ballot, voting machine ballot, or other type of ballot supporting the secret ballot process.

**§ 81.35 When must the Secretarial Election Board send ballots to voters?**

(a) The Secretarial Election Board must send mailout or absentee ballots to registered voters:

- (1) When the list of Registered Voters is complete; or
- (2) Any time a request for an absentee ballot is received before Secretarial Election date if polling sites are required by the amendment or adoption articles of the tribe's governing document.

(b) All mailout or absentee ballot transactions must be via U.S. Mail before the date of the Secretarial Election.

**§ 81.36 What will the mailout or absentee ballot packet include?**

The mailout or absentee ballot packet contains:

- (a) A mailout or absentee ballot;
- (b) Instructions for voting by mailout or absentee ballot including the date the ballot must be received by the Secretarial Election Board;
- (c) An inner envelope with the words "Mailout Ballot" or "Absentee Ballot" printed on

the outside;

(d) A copy of the proposed governing document or amendment, if the full text is not printed on the mailout ballot; and

(e) A pre-addressed outer envelope with the following certification printed on the back:

I, (print name of voter), hereby certify I am a registered voter of the (name of Tribe); I will be 18 years of age or older on the day of the Secretarial Election; I am entitled to vote in the Secretarial Election to be held on (date of Secretarial Election). I further certify that I marked the enclosed mailout ballot in secret.

Signed: \_\_\_\_\_ (voter's signature)

**§ 81.37 How do I cast my vote at a polling site?**

If polling sites are required by the tribe's governing document's amendment or adoption articles, the Secretarial Election Board will establish procedures for how polling site ballots will be presented and collected, including, but not limited to, paper ballots, voting machines, or other methods supporting a secret ballot.

**§ 81.38 When are ballots counted?**

The ballots will be counted under the supervision of the Secretarial Election Board, after the deadline established for receiving all ballots or closing of the polls, if polling sites are required by the tribe's governing document's amendment or adoption articles.

**§ 81.39 How does the Board determine whether the required percentage of registered voters have cast ballots?**

The Secretarial Election Board must count the number of valid ballots and cast spoiled ballots to determine total voter participation. The Board must take the total voter participation and divide it by the total number of Registered Voters. This total is used to determine whether

the percentage of Registered Voters who cast votes meets the requirements of the tribe's governing documents or Federal statute that requires at least 30 percent voter participation. For example:

(a) If there were 200 registered voters of which 75 cast valid ballots and 5 cast spoiled ballots for a total of 80 cast ballots ( $75 + 5 = 80$ ). The percentage of voter participation would be determined as follows:

Total number of votes cast (80) divided by the total number registered voters (200) or  $80 \div 200 = 0.40$  or 40 percent voter participation.

(b) This example meets the Federal statutory requirement of at least 30 percent voter participation.

#### **§ 81.40 What happens if a ballot is spoiled before it is cast?**

If a ballot is spoiled before it is cast, this section applies.

(a) The registered voter may return the spoiled ballot to the Secretarial Election Board by mail or in person with a request for a new ballot before the election date. The new ballot will be promptly provided to the registered voter. The Secretarial Election Board must retain all "spoiled uncast ballots" for recordkeeping purposes.

(b) If polling sites are required, the voter may return the spoiled ballot to the polling site worker and request a new ballot. Upon receiving the new ballot, the voter must then complete the voting process. The polling site worker will mark the spoiled ballot "spoiled uncast" and record that the ballot has been spoiled. The polling site worker must retain all "spoiled uncast ballots" for recordkeeping purposes.

#### **§ 81.41 Who certifies the results of the Election?**

The Chair and all members of the Secretarial Election Board must be present during the

counting of the ballots and must sign the Certificate of Results of Election.

**§ 81.42 Where are the results of the Election posted?**

The Secretarial Election Board must post a copy of the Certificate of Results of Election at the local Bureau office, the tribal headquarters, and at other public places listed in the Election notice.

**§ 81.43 How are the results of the Election challenged?**

Any person who submitted a voter registration form may challenge the results of the Secretarial Election. The written challenge, with substantiating evidence, must be received by the Chairman of the Secretarial Election Board within 3 days after the Certificate of Results of Election is posted. Challenges received after the deadline for filing challenges will not be considered. If the third day falls on a weekend or holiday, the challenge must be received by close of business on the next business day.

**§ 81.44 What documents are sent to the Authorizing Official?**

The Chair of the Secretarial Election Board must transmit all documents pertaining to the Secretarial Election to the Authorizing Official, including:

- (a) The original text of the material voted on;
- (b) The Eligible Voters List;
- (c) The Registered Voters List;
- (d) The Secretarial Election Notice Packet;
- (e) Any challenges to the Secretarial Election results; and
- (f) The Certificate of Results of Election.

**§ 81.45 When are the results of the Election final?**

The Authorizing Official will review election results and challenges, if any, as follows:

(a) If a challenge is sustained and may have an impact on the outcome of the election, the Authorizing Official must authorize a recount or call for a new Secretarial Election. The Authorizing Official will take the appropriate steps necessary to provide for a recount or a new Secretarial Election. The results of the recount or new Secretarial Election will be final for the Department.

(b) If all challenges are denied or dismissed, the Authorizing Official will review and make a decision based on the following:

(1) The percentage of total votes cast was at least 30 percent, or other percentages required according to the tribe's governing document's amendment or adoption articles.

(2) The voters rejected or accepted the proposed document or each proposed amendment; and

(3) The proposed documents or amendments are not contrary to Federal law.

(c) The Authorizing Official must notify, in writing, the recognized governing body of the tribe, and the Director of the Bureau, of the following:

(1) The decisions on challenges;

(2) The outcome of the voting;

(3) Whether the proposed governing document, proposed amendment(s) or charter or charter amendments are approved or ratified, or if the proposed documents contain language that is contrary to Federal law and, therefore, disapproved; and

(4) That the decision is final for the Department.

(d) The Authorizing Official must:

(1) Forward the original text of the document, Original Certificate of Approval or Disapproval, and the Certificate of Results of Election to the tribe and a copy of all documents to

the Bureau Director; and

(2) Retain, as required by the Records Disposition Schedule, a copy of all document(s) relevant to the Secretarial Election.

(e) If the certified election results show that the tribal members ratified the documents, but the Authorizing Official does not approve or disapprove the governing document or amendment within 45 days of the Secretarial Election, the Secretary's approval of the documents must be considered as given.

**Subpart E – The Secretarial Election Process under the Oklahoma Indian Welfare Act  
(OIWA)**

**§ 81.46 What should a tribe do to adopt or amend its governing document ?**

If a tribe expects to adopt or amend its governing document, it should submit the proposed document to the Local Bureau Official for review and comment. The Bureau may help the tribal government in drafting governing documents, bylaws, charters, amendments and revocations. The Bureau will also explain the Secretarial Election process.

**§ 81.47 What technical assistance does the Bureau provide?**

(a) Upon completing the initial review of the proposed document or amendment, the Local Bureau Official will make a recommendation on the proposed document or amendment, prepare background information on the tribe, and submit it to the Authorizing Official.

(b) The Authorizing Official will:

(1) Review the proposed governing document or amendment and offer technical assistance and comments to the tribe;

(2) Consult with the Office of the Solicitor to determine if any of the provisions of the proposed governing document or amendment may be contrary to applicable law; and

(3) If it appears that a provision is or may be contrary to applicable law, notify the tribe in writing how the provision may be contrary to applicable law.

(c) The Authorizing Official must promptly notify the tribe under paragraph (b)(3) of this section at least 30 days before calling the election;

(d) Once the tribe has responded to the Bureau's technical comments, and any notice of a provision that may be contrary to applicable law, the Authorizing Official may approve the proposed document. The tribe may then submit a request for a Secretarial Election. The Authorizing Official may not authorize a Secretarial Election on any proposed document that contains provisions that may be contrary to applicable law.

**§ 81.48 What does the Bureau do upon receiving the request for an Election?**

(a) The Authorizing Official will issue a memorandum to the Local Bureau Official:

(1) Approving the proposed document or proposed amendments;

(2) Authorizing the Local Bureau Official to call and conduct a Secretarial Election, within 90 days from the date of receiving the tribal request;

(3) Attaching the document or proposed language to be voted upon;

(4) Attaching the Certificate of Results of Election, with instructions to return it at the conclusion of the Secretarial Election. The Certificate shall read as follows:

**CERTIFICATE OF RESULTS OF ELECTION**

Under a Secretarial Election authorized by (name and title of authorizing official) on (date), the attached [insert: Governing document and Bylaws, charter of incorporation, amendment or revocation] of the (official name of tribe) was submitted to the registered voters of the tribe and on (date) duly (insert: adopted, ratified, rejected or revoked) by a vote of (number) for and (number) against and (number) cast ballots found spoiled in an election in which

at least 30 percent (or such "percentages" as may be required to amend according the governing document) of the (number) registered voters cast their ballot in accordance with (appropriate Federal statute).

Signed: \_\_\_\_\_

(by the Chair of the Secretarial Election Board and Board Members)

Date: \_\_\_\_\_; and

(5) Advising that no changes or modifications can be made to any of the attached documents, without prior approval from the Authorizing Official.

(b) The Local Bureau Official will appoint the Chair of the Secretarial Election Board and notify the tribe of the need to appoint at least two tribal members to the Secretarial Election Board. If the tribe fails to make such appointment within 10 days after the notice letter is issued, the Chair of the Secretarial Election Board must appoint two representatives on the eleventh day after the notice letter is issued.

#### **§ 81.49 How is the Secretarial Election conducted?**

After the Chair of the Election Board receives the authorization ofr the Election, the Chair of the Secretarial Election Board will conduct the election following the procedures set out in §§ 81.19 through § 81.45.

#### **§ 81.50 When are the results of the Election final?**

(a) If a challenge is sustained and has an effect on the outcome of the election, the Authorizing Official must authorize a recount or call for a new Secretarial Election. The Authorizing Official will take the appropriate steps necessary to provide for a recount or a new Secretarial Election. The results of the recount or new Secretarial Election will be final for the Department.

(b) If the challenges are denied or dismissed, the Authorizing Official will review and determine whether:

(1) The percentage of total votes cast was at least 30 percent, or such percentages as may be required according to the tribe's governing document's amendment or adoption articles; and

(2) The voters ratified or rejected the proposed document, proposed amendment or revocation.

(c) The Authorizing Official must notify, in writing, the recognized governing body of the tribe, and the Director of the Bureau, of the following:

(1) The decisions on challenges;

(2) The outcome of the voting;

(3) That the proposed document, proposed amendments or revocation becomes effective as of the date of the Secretarial Election; and

(4) That the decision is final for the Department.

(d) The Authorizing Official must:

(1) Forward the original text of the document, Original Certificate of Approval, and the Certificate of Results of Election to the tribe and a copy of all documents to the Director of the Bureau; and

(2) Retain, as required by the Records Disposition Schedule, a copy of all document(s) relevant to the Secretarial Election.

### **Subpart F –Formulating Petitions to Request a Secretarial Election**

#### **§ 81.51 What is the purpose of this subpart?**

This subpart establishes requirements for formulating and submitting petitions to request the Secretary to call a Secretarial Election as required by the governing documents or charters of incorporation of tribes issued under the Indian Reorganization Act (IRA), 25 U.S.C. 476 and 477, as amended, and the Oklahoma Indian Welfare Act (OIWA), 25 U.S.C. 503. This Subpart

may also be used by a federally recognized tribe that is adopting a governing document, under Federal statute, for the first time.

**§ 81.52 Who must follow these requirements?**

Any tribe meeting the criteria in paragraphs (a) or (b) of this section must follow the requirements of this subpart.

(a) A tribe whose governing document or charter of incorporation provides for petitioning the Secretary to call a Secretarial Election for any of the following purposes:

(1) Amending or revoking the governing document;

(2) Amending a charter of incorporation ratified under 25 U.S.C. 477 of the IRA before May 24, 1990;

(3) Amending or ratifying a charter of incorporation under 25 U.S.C. 503 of the OIWA;

or

(4) Taking any other action authorized by the governing document or charter of incorporation.

(b) A federally recognized tribe, without an existing governing document, adopting a governing document under Federal statute, for the first time.

**§ 81.53 How do tribal members circulate a petition to adopt or amend the tribe's governing document?**

Tribal members wishing to circulate a petition to adopt or amend the tribe's governing document should submit the proposed document to the Local Bureau Official for review and comment. The may help the petitioners in drafting governing documents, bylaws, charters, amendments and revocations. The Bureau will also explain the Secretarial Election process.

**§ 81.54 What technical assistance will the Bureau provide?**

(a) The Bureau will provide technical assistance for a petition only upon request of the spokesperson. Bureau personnel will provide a courtesy copy to the tribe's governing body of all correspondence regarding technical assistance to the petitioners. The spokesperson will be responsible for obtaining the approval of the tribal members it represents on changes to the content of the petition.

(b) Upon completing the initial review of the proposed document or amendment, the Local Bureau Official will make a recommendation on the proposed document or amendment, prepare background information on the tribe, and submit his recommendation to the Authorizing Official.

(c) The Authorizing Official will:

(1) Review the proposed governing document or amendment and offer technical assistance and comments to the tribe;

(2) Consult with the Office of the Solicitor to determine if any of the provisions of the proposed governing document or amendment may be contrary to applicable law; and

(3) If it appears that a provision is or may be contrary to applicable law, notify the tribe in writing how the provision may be contrary to applicable law.

(d) The Authorizing Official must promptly notify the tribe under paragraph (b)(3) of this section at least 30 days before calling the election;

(e) Once the petitioners have responded to the Bureau's technical assistance, comments and notice of any provision that may be contrary to applicable law, they may submit their petition requesting a Secretarial Election.

#### **§ 81.55 Who may initiate a petition?**

A member of the tribe who is 18 years of age or older whose governing document or

charter of incorporation permits tribal members to petition the Secretary to authorize a Secretarial Election.

**§ 81.56 Who may sign a petition?**

A member of the tribe who is 18 years of age or older.

**§ 81.57 Who is authorized to submit a petition to the Secretary?**

The petitioners must designate a spokesperson to submit the petition and act on their behalf for the petitioning process.

**§ 81.58 How is the petition formatted and signed?**

(a) Each page of the petition must contain:

(1) A summary of the purpose of the petition, or proposed document, or proposed amendment language;

(2) Numbered lines for each individual to print their legal name, current mailing address, date, and signature, and;

(3) The following declaration at the bottom of each page to confirm the collector was present when each signature was collected:

“I, (Collector’s Printed Name), hereby declare that each individual whose name appears above signed and dated the petition. To the best of my knowledge, the individual signing the petition is a member of the tribe and is 18 years or older.

(Signature of Collector)

(Notary Certification)”,

(b) Each individual must print their legal name, current mailing address, date, and sign on a numbered line.

(c) Each collector must complete and sign the declaration on each page in front of a notary, who will sign and certify.

**§ 81.59 Do petitions have a minimum or maximum number of pages?**

A petition can have as many pages as necessary to obtain the required signatures, however, each page must have the information shown in § 81.58.

**§ 81.60 How do I find out how many signatures are needed for a petition to be valid?**

(a) For a tribe whose governing document or charter of incorporation provides for petitioning the Secretary to call a Secretarial Election:

(1) The spokesperson for the petitioners may ask the tribe or the Local Bureau Official how many signatures are required.

(2) The Local Bureau Official will:

(i) Contact the tribal governing body to obtain the current number of tribal members, 18 years of age or older, to determine the number of tribal members who must sign a petition as required by the tribe's governing document; and

(ii) Notify the petitioners' spokesperson how many signatures are required and that the number is valid for 180 days from the date of this notification.

(b) For a federally recognized tribe adopting a governing document under Federal statute for the first time, the petition must have signatures of 20 percent of the tribal members who are 18 years of age or older.

**§ 81.61 How long do tribal members have to gather the signatures?**

Tribal members have one year from the date of the first signature to gather the required signatures.

**§ 81.62 How does the spokesperson file a petition?**

The spokesperson must submit the original petition to the Local Bureau Official.

**§ 81.63 How does the Local Bureau Official process the petition?**

(a) The Local Bureau Official must, on the date of receipt, date stamp the petition to record the Official Filing Date, and make three copies of the petition for use as follows:

(1) Posting at the local Bureau office for 30 days from the Official Filing Date, including a statement of the proposal contained in the petition and instructions for filing a challenge;

(2) Use in determining sufficiency of petition; and

(3) For viewing at the Local Bureau Office by a member of the tribe, 18 years of age or older.

(b) The Local Bureau Official must, within one week of the Official Filing Date:

(1) Provide the spokesperson written acknowledgment of receiving the petition, which contains the Official Filing Date, the exact number of signatures submitted on the petition, and the statement “The petitioners may not add or withdraw any signatures from the petition after the Official Filing Date”; and

(2) Provide a copy of the written acknowledgment of receipt and petition to the recognized tribal governing body.

(c) The Local Bureau Official must:

(1) Consult with the Office of the Solicitor to determine if any of the provisions that are the subject of the petition are or may be contrary to applicable law; and

(2) If it appears that a provision is or may be contrary to applicable law, notify the petitioner’s spokesperson in writing how the provision may be contrary to applicable law.

(d) The Local Bureau Official must promptly notify the petitioners of any problems identified under paragraph (c) of this section at least 30 days before calling the election.

#### **§ 81.64 How can signatures to the petition be challenged?**

Any member of the tribe, 18 years of age or older, may challenge in writing the

signatures appearing on the petition. The challenge must be submitted to the Local Bureau Official, within 30 days of the Official Filing Date of the petition and must:

- (a) Identify the page and line on which a signature appears; and
- (b) Provide documentation supporting a challenge that at least one of the following is

true:

- (1) A signature was forged;
- (2) An individual was ineligible to sign the petition;
- (3) A petition page is inconsistent or improperly formatted; or
- (4) A petition page contains an incomplete declaration statement.

**§ 81.65 How is the petition validated?**

(a) The Local Bureau Official must:

- (1) Confirm the petition has the required number of signatures;
- (2) Indicate any signatures appearing more than once and include only one in the count;
- (3) Make recommendations regarding any challenge to the validity of signatures based

upon the documentation provided by the challenger; and

(4) Verify the petitioning procedures complied with this Subpart.

(5) Transmit within 45 calendar days of the Official Filing Date the original petition, challenges, and recommendations to the Authorizing Official.

(b) The Authorizing Official must within 60 calendar days of the Official Filing Date:

(1) Determine whether the petition complies with the requirements of this Subpart;

(2) Inform the spokesperson for the petitioners and the recognized tribal governing body, in writing, whether the petition is valid, the basis for that determination, and a statement that the decision of the Authorizing Official is final for the Department.

(i) If the petition is determined valid for the purposes of calling a Secretarial election, the Authorizing Official will instruct the Local Bureau Official to call and conduct the Secretarial Election in accordance with §§ 81.19 through 81.45.

(ii) If the petition is determined invalid, the Authorizing Official will notify the spokesperson for the petitioners, with a courtesy copy to the tribe's governing body, that the petition was not valid and a Secretarial Election will not be called.

**§ 81.66 May the same petition be used for more than one Secretarial Election?**

No. A petition may not be used for more than one Secretarial Election. Each request for a Secretarial Election requires a new petition.

**PART 82—[REMOVED AND RESERVED]**

2. Remove and reserve part 82.

Dated: October 3, 2014.

Kevin K. Washburn,  
Assistant Secretary – Indian Affairs.

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