

## BUREAU OF INDIAN AFFAIRS



### HIGHLIGHTS OF FINAL RULE Secretarial Elections (25 CFR 81)

The Bureau of Indian Affairs (BIA) has published a final rule that finalizes updates to procedures for Secretarial elections and petitions for Secretarial elections. See 80 FR 63094 (October 19, 2015). The rule combines the former 25 CFR Part 81 (Secretarial Elections) and the former 25 CFR Part 82 (Petitioning Procedures) into one new 25 CFR Part 81.

#### **What is a Secretarial election?**

A Secretarial election is a Federal election conducted by the Secretary of the Interior (delegated to the BIA).

#### **Does the final Secretarial elections rule apply to me?**

The final Secretarial Elections Rule applies to Tribes who are required to hold a Secretarial election because:

- A Federal law requires a Secretarial election to take an action;
- The Tribe's governing document requires a Secretarial election to take an action;
- A Federal corporate charter requires Secretarial approval; or
- The Tribe is adopting or amending a Federal charter of incorporation, and certain circumstances apply (see rule for details).

Tribes that are covered by this rule may choose to remove the requirement for Secretarial election for future amendments to a governing document adopted under Federal statute. The final rule clarifies how to do this, and the Department encourages Tribes to do so in furtherance of tribal sovereignty and self-determination.

#### **What does the rule do?**

The rule sets out the procedures for BIA to call and hold a Secretarial election and sets out the requirements and procedures for Tribal members to petition for a Secretarial election. Specifically, the rule:

- Lists what a Tribal request for Secretarial election must include;
- Lists what Tribal members' petition for Secretarial election must include;
- Establishes that BIA will give deference to the Tribe's interpretation of its own documents;
- Clarifies that any tribal member who is 18 years of age or older and otherwise qualified is eligible to vote, may vote in a Secretarial election (because a Secretarial election is a Federal election);
- Clarifies that BIA pays for the costs of holding a Secretarial election (directly or through contract/compact funding); and
- Explicitly sets out the steps for a Secretarial election, such as:
  - Getting technical assistance from BIA;
  - Establishing the Secretarial Election Board;
  - Providing the Secretarial Election Notice;
  - Registering for a Secretarial election;
  - Compiling the Registered Voters List;
  - Challenging the Registered Voters List;
  - Counting ballots and certifying election results; and
  - Challenging the results of the election.

### **What are the major changes this rule makes to Secretarial elections?**

The rule makes several changes to how Secretarial elections are conducted, including:

- Requiring that voting in Secretarial elections be conducted by mail, unless the Tribe's governing document requires polling places;
- Clarifying the difference between Secretarial elections conducted under Indian Reorganization Act (IRA) and Oklahoma Indian Welfare Act (OIWA) (in OIWA elections, the Secretary approves the document and then Tribal voters ratify);
- Incorporating the statutory timeframes in which BIA must call and hold a Secretarial election; and
- Clarifying that Tribes are encouraged to seek informal review from BIA prior to submitting an official request for election.

### **What are the benefits of seeking an informal BIA review of a request for Secretarial election?**

The Department strongly recommends that Tribes seek an informal review as a best practice prior to submitting an official request for Secretarial election that would trigger the tight timeframes for BIA action.

The informal review will:

- Ensure that all the necessary documents are internally consistent and as compliant as possible with applicable laws;
- Avoid complications resulting from conflicting or noncompliant documents;
- Avoid inadvertent disenfranchisement of voters;
- Ensure the election proceeds as smoothly as possible; and
- Help protect the integrity of the election and ultimate election results.

### **What major changes does the rule make to petitioning procedures?**

The rule now requires that, in petitioning to adopt a governing document under Federal statute for the first time, at least 50% of tribal members sign the petition for Secretarial election. (Formerly, 60% was required).

### **Does the rule reflect the input of Tribes?**

Yes, the rule has been in development for several years, during which the Department held numerous consultation sessions with Tribes. Most recently, in 2014, the Department published a proposed rule at 79 FR 61021 (October 9, 2014) and held several consultation sessions with Tribes specifically on the provisions of that proposed rule. The final rule reflects comments and suggestions received from Tribes on that proposed rule.

### **Where can I find additional information on the rule?**

For additional information on the Secretarial election rule, visit the following website:

<http://www.bia.gov/WhoWeAre/AS-IA/ORM/25CFR81/index.htm>

### **Who may I contact if I have questions about the rule?**

If you have questions about the rule, you may contact Laurel Iron Cloud, Division of Tribal Government Services, Central Office, BIA at (202) 513-7641. If you are anticipating the need for a Secretarial election and would like initial guidance or an informal review, you may contact your local BIA regional or agency office.

BIA regional and agency contact information is available at:

<http://www.bia.gov/WhoWeAre/RegionalOffices/index.htm>