UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

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TRIBAL CONSULTATION
Proposed Secretarial Elections Rule (25 CFR 81)
Thursday, November 20, 2014
8:30 a.m. - 10:20 a.m.

Whitney Oaks Golf Club
2305 Clubhouse Drive
Rocklin, California 95765

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Reference No. 15298
Reported by: Patricia R. Chapin, CSR No. 13493
PRESENTERS:

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ATTENDEES:

LEORA TREPPA DIEGO, Habematolel Pomo of Upper Lake

KATHLEEN D. TREPPA, Habematolel Pomo of Upper Lake

COLLEEN PETE, Robinson Rancheria

LYDIA AGRAYO, Manchester Point Arena Band of Pomo

JOSEPH HOLSTEIN, Habematolel Pomo

ALISON HARVEY, United Auburn Indian Community

LISA ELGIN, Manchester Point Arena Band of Pomo Indians

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Rocklin, California
November 20, 2014

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MS. IRON CLOUD: All right. We'll get started.

Good morning, everybody. Thank you all for coming today. We are here, my name is Laurel Iron Cloud, and I'm the division chief for tribal government services. We're here today to engage in a formal consultation session in regards to 25 CFR, what's currently Section 81 and 82. In the proposed rule, it's just 81, specifically with regard to secretarial elections.

I'm here today along with my colleague Dani Daugherty, Dani in the blue. She's the deputy regional director from the great plains region. Also with me is Scott Keep, who's senior counsel of the Division of Indian Affairs with the solicitor's office also coming out from DC with me, and Harley Long from right here in the Pacific region. He's the tribal government services officer.

We're going to go through the process and provide some background, some update, where we are, how we got here, and how we got to this proposed rule. But before we get started, since there's just a few people here, I'd like to have you make self-introductions just for the
record.

Anytime we have any questions or comments, if you'd please remember to identify yourself. We also have court reporter, Pat Chapin, with us, and she would like to make sure that she has the proper names to attribute to all of the comments. So I'll just start over here. You have a microphone. Just identify yourself for the record and introduce yourself.

MR. KING: Jimmie King, social services representative, Southern California.

MS. ELGIN: Lisa Elgin, tribal administrator for Manchester Point Arena Band of Pomo Indians.

MS. AGRAYO: Lydia Agrayo, tribal treasurer for Manchester Point Arena Band of Pomo Indians.

MS. PETE: Colleen Pete, Robinson Rancheria tribal member.

MS. TREPPA: Kathleen Treppa, Habematolel Pomo of Upper Lake.

MS. DIEGO: Leora Treppa Diego, Habematolel Pomo of Upper Lake.

MS. HARVEY: Alison Harvey, United Auburn Indian Community.

MS. IRON CLOUD: Thank you all very much. So the process that we're going to go through today is, we'll provide some background, like I said, leading up to how
we got to this process, how we got to this draft that is before you right now. And we'll also go through some of the consolidation and some of the work that's been done to bring it into the one part, and we'll talk about the major changes.

And at each change, we are proposing if you have any questions on each change, feel free to interject and ask questions. We would like this to be interactive. So with that, we'll just get started.

MR. KEEP: Good morning. I'm Scott Keep. I'm the senior counsel in the division of Indian Affairs. We're in Washington DC. My assignment this morning is to try to give you some of the past background on how we got to where we are today on the regulations. I'll also give you a little bit of background on how the regulations developed historically after the passage of the IRA in 1934.

The first regulations came out shortly after the regulations or statute was passed in 1935, and those are available. If anybody wants to look at the original regulations, we can provide that. In those days, the Code of Federal Regulations, the CFR, was published to regulate --

(Reporter interruption.)

MR. KEEP: We can provide you with historical
documents about how the regulations developed.

The last regulation in 1981 was a major turnaround that applied regulations for the first time to both the tribes in the contiguous 48, to Alaska and Oklahoma. After that, we had a major legislative event with the amendment of the IRA in 1988 following the Coyote Valley litigation, which put some time limits on the department's processing of requests for the adoption of constitutions and the consideration of amendments, both time limits and process limits.

After the Coyote Valley legislation was passed in November of '88, the department began to look at revising the regulations to bring them up to date with the legislation and the evolving policy as well as the circumstances. I think that from a historical point of view, there was a great evolution, if you will, among tribes and organizations beginning in the late '60s and early '70s with the availability of federal funds. Tribes became much more active in the administration of their governments, and so the requirements for the organized tribal government became increasingly important.

The current proposal that is before you began probably in the early 2000s, and we came out with proposed regulations in 2009 and conducted, I believe it
was, five consultations in late 2009 and 2010 to consider the proposed revisions to bring the regulations up to date following the '88 amendments.

Those regulations, the proposed ones, were never finalized. And instead, a new group was tasked to revise those original proposals, which is what you have before you. That process has been enforced for several years, the result of a great deal of work by Dani and her cohorts who went back across the country because it needed to get the expertise from groups in Oklahoma and Alaska and across the nation.

Which brings us to where we are today. We are in the third of three consultations, so we're anxious to hear what you all think about the proposed revisions. And to the extent that you have questions, we'll do our best to explain why these changes were made and perhaps why certain other changes were not made.

So that's how we got to where we are today. And I'm going to turn it over now to Dani to go through some of the highlights of the particular changes that may be of interest to you.

MS. DAUGHERTY: Good morning. I have to say I come from the (inaudible) reservation. Laurel is from the same reservation. And for a lot of years, we were the poorest county in the nation, and then I think we
were like No. 2 or No. 3, depending on the year, but we're still way up there. And to come out and see that a beautiful business like the one that we're presenting in today -- I'm just really pleased about those sorts of things. I love traveling around the country and seeing how different the nations are. So thank you for hosting this consultation.

As Scott mentioned, we have been working on this process for a while. I came into tribal government in 2008, and this process had already been through some permutations. I attended the last round of consultations. And then after those consultations, there was some significant redrafting.

As Scott mentioned, that was the draft that we have before you today. And the reason we're going to highlight some of the bigger changes is that largely there's huge portions of the regulations that have not changed. They've mostly just been reorganized to what we think is a more logical structure.

And the prior Part 81 and Part 82 -- 82 was about petitioning, and 81 was about conducting elections. But 82 also had a lot of parts in it about conducting elections, and we thought well, that really doesn't make any sense at this point because there's a petitioning process to get a petition completed, and at the end of
that process once a valid petition is submitted and the
election can go forward, then the process is exactly the
same as the other process where a tribe's governing body
initiates a request for a secretarial election. So we
thought it would be much clearer to have a section that
solely addressed how you conduct an election, and then a
distinct section that only addressed how you engage in a
petitioning process that leads up to that official
request for a secretarial election. So we were hoping
that would eliminate any confusion about the differences
between those parts. So that was one of the biggest
changes. And then the substance of some of the process
has stayed very much the same.

So I'm going to try to highlight a couple things
for you. But first, people always ask when do
secretarial elections apply. And I think sometimes
there's people who think they don't apply when they do,
and that they do apply when they don't. So it's a
confusing thing. A secretarial election is a federal
election intended to get the, I guess, input of the will
of the people regarding changes to how the tribe governs
itself, particularly in relation to the tribe's governing
document, which most commonly is a constitution.

And I'm just going to survey everybody in the
room. Does your tribe have a constitution? Is that your
governing document? Everyone is saying yes. Because there are some tribes that have no governing document at all. They do things still from just how traditionally they managed the nation. And then there's some tribes that have articles of incorporation.

Is that right, Scott?

In my region, they're all constitutions. So it's fascinating to me how other nations govern themselves in a different way. But you guys are all constitution, so that will help with the conversation, because that's what I'm most familiar with. And honestly, that's what I see the most action on in my region, is amendments to constitutions.

And then there are other proponents where a secretarial election applies, and that is in regards to charters. I don't know if your nations also have charters under the Indian Organization Act, but it also applies in certain scenarios in there. And if you want to get to the nuts and bolts of that, there's all these fun little permutations of it -- is your charter in place before 1990 or is it a new charter after 1990? And even if it's a new charter after 1990 where you wouldn't necessarily have to have an election, if you propose language that requires it, it brings you right back in. So if you want to talk about real specifics like that, we
certainly can do that without twisting your minds into it. But where we see the most action in secretarial elections is amendments to constitutions. And of course, the other component is sometimes there will be a recognition of the nation or federal statute reinstating a nation, so there will be a requirement by federal law. This is how a nation is going to initiate a new document, its governing document, for the first time. So that might require a secretarial election as well.

What this proposed rule does, as I mentioned, is to consolidate and simplify Part 81 and Part 82 into just one Part 81. If you look in the printout of the regulations, it has the subparts, and I'm going to just briefly touch on those, just so you know what those are. But Subpart A describes the purpose and scope. Subpart B is the definitions. Subpart C is the general provisions. And then Subpart D is the process that really gets into the nuts and bolts of the process. Subpart E touches briefly on the Oklahoma Indian Welfare Act, which has a slight variation from how we do business in the rest of the world. And Subpart F is the petition section. So we'll go over some of the changes in each of those areas in more detail.

And honestly, even though we're highlighting
mainly the significant changes, if you have questions about any part, as we go along or at the end or if you are making commentary either today or later -- and we'll go over in a little bit here how you can do that. You can do it by mail, you can do it by email, you can call Laurel. We'll take submissions up through December 17th of this year. So however you do those comments, it's not limited just to the things that have changed. It covers anything that needs regulation. So even if it's a regulation that looks identical to what was before this draft, everything is on the table when a consultation is taking place. So even if it's something that's been in place for decades, if you have a comment on it or a proposed change to it or a concern about it, definitely submit comments on everything in these regulations. So the first major change that we're going to cover is --

ATTENDEE: Excuse me. Do you have one more of these?

MS. DAUGHERTY: Oh, yeah. Absolutely. And if you are the kind of person -- I know I'm that way sometimes -- that you want a clean copy and one you can write on, write on the one you have now, and you can grab extra copies going out the door.

So the first major change is that it establishes that voting is done -- or as it currently stands, the
regulations state that voting is done at a polling place or by absentee ballot. As it's proposed, the voting is all done by mail unless the tribe's -- whatever document governs, and I'll just say constitution for example -- in a constitution, if you look down typically toward the end of your constitution, there's often an article called amendments, how do I amend this document. And it would be the same is true for a charter. But how that amendment section reads might alter that. So that would be different on a case-by-case basis. We have to look at your specific constitution to answer specific questions.

But so the voting will occur by mail unless your constitution or the documents being voted on provides otherwise. One of the reasons for this is that it is always a challenge in Indian country to get voter turnout. I think we've seen that improve over time, both in these types of elections, secretarial elections for documents and for leadership elections, either for the tribe itself or for national elections. But voter turnout still is a concern. And so one of the goals was to hopefully reach more voters and get a higher voter turnout.

Also, in this day and age, we're also definitely seeing some budget challenges, so we wanted to make sure the maximum amount of resources were freed up to provide
other services. So there were several reasons. But the major reason we discussed was that we really did want to encourage the highest voter turnout possible. And once again, if your document either has it and you -- when I say "it," I mean it has a requirement for polling location and you don't want that in there or vice versa, if it doesn't and you do want it in there, that's something that we can tackle at the next secretarial election. Propose a secretarial election to alter it one way or the other.

Or the other alternative, which we'll get to in a minute here -- is the other alternative is -- this was, I think, a very important change to these documents as well, was that you can take us completely out of the process. The prior draft did not have that in there expressly. We don't have that happen very often, and I can't articulate that that's a surveyed data or talking to the community members, but it's not something that tribes pursue very often to remove us from the secretarial election process by taking all mention of us out of the amendment section of their documents.

But these regulations previously did not expressly say you can do that. So I think some people didn't know if it was even possible because it's not covered. But we've made that crystal clear in this
version that you can take the secretary out of the amendments process, which I think is the best way to go. I know some tribes have a concern, you know, does that mean we're trying to sever the government relationship, and we don't want to do that. But I think from my personal viewpoint, that's where the nations become stronger and stronger, when they're addressing and dealing with all their constitutional amendment changes themselves. So I think it's a process. Some are more comfortable doing it than others, but these regulations allow for that, so I'm really excited about that language change.

MS. HARVEY: Where is that in the section?

MS. DAUGHERTY: It's the one about the -- if they can't find it -- we did this at the last section too. Somebody would ask a question, and then we flip through and find it. Where's the answer to that exact question? So I'd have to stop, and we'll get back to you on that one.

The other proposed change, and Scott may weigh in on this one too. It voids an authorization -- in the current version, it would void an authorization for an election anytime an election was not acted upon within 90 days from the date. That section was removed, and not for any reason to say we weren't going to conduct an
election within 90 days, but more so that we want to be able to continue that process.

I know in some regions it has been the possibility to -- and in our region, we never go beyond the 90 days unless a tribe asks for it. And the times we get a request for it is when the tribe wants to do more voter education. So sometimes they'll have an election scheduled and they'll say we haven't sent out the mailing materials yet and we want to get permission to go beyond that and do an extra month or two of voter education or more time to secure our voter lists in a more concise way. So that was one of the reasons.

And Scott do you have any comment?

MR. KEEP: I'm not sure I can add much to it. I think that some of the tribes are more spread out and they need additional time to educate their tribal members as well as it may be that we're having trouble making sure that we have a reasonably complete voter list so that we have a list of folks that we need to give notice to of the need to register to vote. So those are some of the things, I think. So if a tribe hasn't had an election in a number of years that they have required registration for, we don't have current addresses or locations for all the tribal members. Some of them are things that sort of require some additional time.
The reason for the expiration from at least some of the concerns in the solicitor's office is that sometimes they go stale. And so particularly with regard to any petition where it takes a long time for the petition to circulate and get the number of signatures and to verify those signatures, some of that process needs additional time.

MS. DAUGHERTY: Thanks, Scott.

And I think I found the section. I knew it was in there. It's 81.2. And I have it in through E through H. I'm not sure what precise part of this, whether it's E, F, G, or H.

And then here's the one big change that I think I personally also believe in, and on behalf of the department and tribes, is one of the best changes to this process. There was a lot of confusion about it, and I think it really heralds this new era of how we're working really collaboratively with tribes to prepare and put forth some of the best document reviews. I've been really blessed to be a part of this process since 2008, and it's just my goal to make sure that these processes happen properly and then also to make sure we end up with the best documents possible.

So this section is the definition of a tribal request, because there was -- okay. Anyway, the tribal
request -- here's what would happen typically in these processes. When you hear that the election occurs in 90 days, what would often happen is a tribe would pass a resolution, and the resolution would come to the office. And the tribe would say okay, let's have the election in 90 days. And sometimes that resolution would be very sparse; it would say things like we want to change the enrollment criteria from a quarter to an eighth, or in our region we've seen it from an eighth to a quarter as far as the quantum requirement, and then it wouldn't say anything else. Or that we want to increase the prohibition on running for office from two years to ten years.

So then we would have to communicate back to the tribe and say well, what we really need is -- here's your constitution, the precise language that's in your governing document, and what we need is what is the precise language that you want to replace some section with, whether it's in the membership criteria or the leadership criteria as far as who's eligible for a candidate to run for office. And so then the tribe would say oh, okay, well, we haven't really worked on the precise language. So then they'd sit down with their attorneys and have discussions. And all of that effort is eating up time. So then the tribe would come back
maybe in a week or two, and then we'd have to stop and
look at the language. All the while, everyone is
cconcerned is the clock ticking, is it not ticking.

And from our perspective, we would say well, we
really can't send out a mailing packet until -- because
we have to send out the mailing packet from the bureau's
side. We can't send out a mailing packet until we can
actually tell the voters precisely what they're voting
on. So in some cases, the tribe wouldn't get back, you
know, for 30 days or 60 days, which is totally
understandable from my perspective. If I'm changing my
governing document, I want it to be precisely exactly
what I want, so I'm not going to complain if they take a
long time to do that work. You take a long time because
this is such an important thing; it's your document that
guides your entire nation, and it's making important
changes that affect your leadership and your membership.

So there was some confusion between us working
together that when did that 90 days start. So from our
perspective, we have to send out the mailing packet and
we want that precise language in there that we
recommended that there be three requirements for an
official tribal request. That way we knew you were ready
to go and that you knew that you had precisely what the
people were going to be voting on going out to them so

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they fully understood what this election was about.

So a tribal request now is defined, and it requires three things from the tribal nation. The first is a duly-adopted resolution. And once again, I'll survey the crowd. Do you guys all work with resolutions? Nobody does anything differently than a resolution.

There are some tribes that have a general counsel, and they do a voice vote or things like that. They might call a resolution something different. Whatever the governing body's way of expressing its intent, then we have to do that. And in our case, it sounds like it's a resolution.

Then the other possibility, of course, is the petitioning process. And once again, you really have to look at your amendment section for this as well because not every tribe allows a petitioning process. Some do, and some don't. I like petitioning processes myself personally because it gives the people a chance to express themselves and to propose changes to the governing documents. But sometimes the document just doesn't have it. But if it does have a petitioning process, then that's the other methodology that you can see a request for secretarial election coming forth. So you have either a petition or a resolution.

So the second part of the tribal request is, as I
already mentioned, the exact document or amended language
to be voted on. Or sometimes it's a removal too. It's
not that you're proposing a language change; you're
actually proposing to take a whole section out or a whole
article out, which I have seen done. So it might be
this: This is what the language used to say, and we want
that gone. So that's another exact language change you
might see.

And then the last thing for tribal request -- so
No. 1 is the resolution or a valid petition. No. 2 is
the exact language changes to be voted on. And No. 3 is
a list of tribal members. They have to be 18 years of
age or older within 120 days of the date of the tribal
request. That's because that will be the list of people
that we send the mailing packet out to and the
registration packet out to.

And this is just my side tip. If you are going
to be conducting a secretarial election any time in the
future, it is always a good idea to start as soon as the
thought appears in your head and you're thinking about
doing it, to start working right away with your
membership to update their mailing list. Because that's
one thing we see in our region.

Harley, I don't know if you have done any
elections.
I know that's one thing I see a lot in my region, is a lot of return mail. And that's -- I mean people move a lot. That's just the nature. We're very -- I think even though they always say the Plains Indians were the nomadic ones, I think we're all nomadic now. It's just such a different society. We have access to so much more transportation. So that's definitely an issue. So I would say if you're going to start on this process at all, definitely consider doing some sort of publicity drive to get people to update their mailing list so that, once again, you maximize voter participation in these important decisions.

So that's the third thing, a voters list from the tribe. And we request that it be submitted electronically because it is just easier to create a mailing list and labels, envelopes, to mail things out to people if the list comes in electronically. It just expedites things and assures that you'll get a really good voter mailing that goes out with maximum participation.

So that was what we suggested be the components of a tribal request so that when we got a request, it was ready to go and you could easily achieve that election in the 90 days that you're seeking to have the election within.
So then the other component here, I'll just touch on real briefly, is as far as the exact language, one of the things we see more often in our region is tribes will submit that language to us even before they do a resolution and just ask us is there anything we should watch out for in this language. So we even have started to work with the tribes in our region in advance of a resolution to give them some pointers on what might be some of the challenges.

The most common error I see or challenge I see is a tribe will focus in on I want to change this article or this section, and they'll make the change, and then whoever is reviewing it or working on it with them doesn't take that change and then check through the whole constitution, and there's usually sometimes connected references or cross-references that are also affected by that change. That's the most common one I've seen. And if we can catch that for you in advance, that just speeds up the process before you get to the resolution stage. But we'll give you back a technical comment letter in writing no matter what if you give it to us in advance or just bring it in with the resolution, you'll get a technical comment letter. And that hasn't changed from the prior regulation.

The other -- before I go on, does anyone have any
questions about that item? That really is the biggest change. And once again, even if you don't have a comment here, if you're thinking this through and you want to submit something saying you think it's a good idea or you'd like to see it altered further, you can do that at a later date too. But does anybody have any questions about that one? Okay. That's fine. I'm kind of one of those people -- I'm listening, and then I go home and all these thoughts occur to me. So then that's the time to write them down and submit them.

One of the other big changes is -- and this came out of my region. We actually had this issue, and we didn't know what to do with it. That's been the challenge that sometimes the regulations will have a gap in them, and somebody will say well, what about this, and there's no answer. So Scott and I have been on more than one call on a variety of things where there really is no answer or guidance, and we try to figure out what's the most reasonable thing to do that's most deferential to the tribe's authority but still is a reasonable answer to the question. So this is why this particular change was proposed, because this issue came up and we had no answer. So we thought there had to be some guidance in the regulations.

What came up in this case was, we had a tribal
nation that engaged in the election process. And this really is a question about balancing the tribe's authority with the will of the people. And I'm not saying this answer is the right answer, so I really do welcome some commentary from all of you in this regard. But what happened was, the election started, the tribe gave us all the information, and we got the language, we got the list, we did the mailing, people registered to vote, the election was literally within a week away.

The election was ready to go, everyone was ready to vote, people had registered so we knew they wanted to vote. And here the tribe stepped up and said we want to cancel the election. And we did not know what to do because the voters had expressed their intent. There was nothing in the language about it. And so what we ended up doing was just proceeding with the election. And the tribe was okay with that at some point, but we honestly did not know what to do in those circumstances. But I guess what we basically considered was the fact that so many people had registered, they had said we want to vote, and we felt they should be given that opportunity. Once again, don't know if that was the correct decision standing here, but we had to do something in the absence of language.

So this has some guidance. And what that
guidance is, is basically mirroring what I just told you. At some point, the election will go forward, and that point here is -- that's in Section 81.17. It prohibits withdrawing a request for a secretarial election after the deadline for registration to vote has passed. And I understand this is -- it's kind of tricky. If you're from a tribe's perspective and you're a governing body, I can see why you would want to say what do you mean, I'm a tribal nation, I should be able to control this process right to the end. And then you have to weigh that against the member's intent, their interest in being allowed the opportunity to vote on that election once they've been offered that opportunity and registered to take part in that. We welcome your comments because I honestly don't know if that's the right answer.

MS. HARVEY: Alison Harvey. What if it was in an election that was from a petition rather than the tribal...

MS. DAUGHERTY: This makes no distinction. So if it's a -- you know, I can see possibly having that distinction. That's a great point. To say this is true if it's a petition, but a nation itself can withdraw it if it's from a resolution. I think that's a really valid point.

MS. HARVEY: Because you could have people
submitting a petition, and then, what if the tribal
counsel requests to have it canceled?

MS. DAUGHERTY: Exactly. This would protect from
that, but now that you're saying that, this variation
pops into my head that possibly to do with having a
divergent way of doing it, different for petitions versus
a resolution or just leaving it as it is and protecting
the right to vote regardless of how the election was
initiated.

MS. IRON CLOUD: As it reads, it says in the same
manner. So you would then wait for the spokesperson, the
same process that would have been brought forward by a
spokesperson. That's the same manner. So it wouldn't
be -- I'm not going to -- I'm going to look at Scott and
ask him.

MS. DAUGHERTY: I'm saying it says in the same
manner. You would think for it to halt, and then the
petitioners would have to report -- Scott, is that your
interpretation?

MR. KEEP: Yeah. I think that's the
interpretation.

MS. DAUGHERTY: Okay.

MS. HARVEY: So if 20 percent of the people ask,
do the same 20 percent of the people then have to
withdraw? Or some other 20 percent?
MS. DAUGHERTY: That's a good question. That's why the consultation process is so important, because it helps us address clarification questions. So that's great.

MR. KEEP: That is a good question. All right. The existing regulations on a petition requires 60 percent. So the secretary wanted to lower that percentage, and then lowering that percentage has created sort of this additional issue that might not have existed. So that's one we hadn't thought of. All right? I appreciate you raising it. I think we have to address it.

MS. DAUGHERTY: Definitely.

When you have a question, if you could introduce yourself for our court reporter so she can take your name down.

MR. HOLSTEIN: Joseph Holstein. My question was so if it was petitioned in after this change, would the percentage of petition basically change? So if you have 60 percent petition and then change the resolution, after this change, is it going to require 20 percent?

MS. DAUGHERTY: It was billed 20 percent. The 60 percent is in regards to new documents. But sometimes if you look in the amendment section of the document that you're addressing, the minimum is 20 percent. That's
sort of the default. But sometimes tribal constitutions or other governing documents will have higher percentage. So you just have to look there as well.

MS. HARVEY: And then that would govern, that percentage, in the constitution?

MS. DAUGHERTY: If it's higher.

MS. IRON CLOUD: You just can't go lower.

MS. DAUGHERTY: Yes.

MR. KEEP: And I think we really have to look at that sort of -- that's a new twist because even if it's 20 percent and you got a request for 20 percent, but then 30 percent come in and say we want to revoke or we want it canceled, we have got an issue as well as the 30 percent requested and then 20 percent come in and say we don't want it to go forward. And again, it's indicating 20 percent is the minimum. It's a twist that really hasn't been fully explained and explored. And these are important questions that we need to --

MS. DAUGHERTY: Well, and we do have language that was not altered because -- I laughed a little bit because I heard somebody say that sounds like my tribe or that sounds like your tribe. And that really is an issue. I mean we do have leadership challenges to nations around the country, and you see competing factions. That's not an unusual thing; that's true of
politics everywhere.

And so the language that hasn't changed that addresses this issue -- and I can find it. If you have somebody who is challenging a petition on a section and you have somebody who disagrees with that so they might say oh, we're going to do a petition on the same section -- there is language in here, and I'll find it for you, because we've had this issue before. If you have a proposal, even from the council itself, and then another proposal with the same exact section, that is required that the first proposal a hundred percent play itself out, election all the way to the end, before you can take action on the next request. So there is some protection in here already for that. And we have seen it that there's been really close to back-to-back elections on the same article. But the first request, the first valid request, plays itself out before the second one can be acted upon.

MS. DIEGO: Leora Diego. First of all, I'd like to thank the bureau for this opportunity and the consultation process. I would like to make a formal statement in regards to this issue that we're talking about. Addressing tribes who have -- because in our constitution, we have the executive council or tribal council can do a request for secretarial election. Plus
we also have a petition process. So I would just like to see that both of those are addressed so it's clear on what that process is going to be.

MS. DAUGHERTY: Okay.

MR. HOLSTEIN: Joseph Holstein. And I just wanted to clarify that the amendment was petitioned and it could be revoked by council.

MS. DAUGHERTY: The language -- the way we interpret that is that petitioners would have to request to have that withdrawn. And according to the language, as it's written now, before the day to register to vote as proposed.

Anybody have any other questions on that particular issue?

MS. DIEGO: Leora Treppa Diego. I just had a question on the registration deadline. So is that a date that comes from the bureau?

MS. DAUGHERTY: Where that date actually comes from is this -- well, that's good. It helps explain what's going on. Let's say you turn in your official tribal request and you have the exact language and you have a resolution or a petition. So we get that, we go through any technical assistance process. And then okay, we're good to go. Then the regional director -- it's called the authorizing official in the language, but what
it really means in almost every case is the regional director. The regional director will issue a letter to the superintendent typically. It says the local bureau official, which may be different in some cases, but almost always again, it's the superintendent. They issue a memo to the superintendent, and it says superintendent, we have a request, it's a valid request, we're authorizing you to conduct an election in 90 days.

And so once you have that, then that local bureau official, typically the superintendent, will ask the tribe. I have ten days, we've got to keep this process moving, who do you want to put on the secretarial election board. So the tribe will, almost always but sometimes not, give us two people that will participate in that board to then conduct the election.

The first thing that board does is sit down to meet to establish the process, and they back things out according to the time. But what they typically do is say hey, we need to meet the 90-day deadline, so the election needs to occur on or before this date, so let's set an election date. And then they will go backwards. The board does that all on their own. They say when do we need to have the registration deadline, when do we need to have our posting of the registered voters list, when do we need to stop challenges to the registered voter...
list. They put all those dates together. We participate in that process because one of our staff is on that board, but it's really up to that board including the two members from the tribe to establish what are these deadlines leading up to the election.

MS. HARVEY: Alison Harvey. On that question of the board, as you know we had a secretarial election last year. And there was confusion concerning who appointed the two people because it just says the tribe, and it doesn't say the tribe's governing body.

MS. DAUGHERTY: Okay. That's a very valid point.

MS. HARVEY: So there was a whole lot of haggling going on about who got to do that.

MS. DAUGHERTY: Right. And I'll bet you they said well, our election board or members of the election staff should get to do it or the president should get to do it. I suppose we could say from the governing body. The challenge with that in all of this with the timeline, sometimes the governing body doesn't get together if they don't have an executive committee, so we might have to consider that. But that's a very good point. I'm glad that you expressed that that issue happened because we need to possibly put some language that addresses that gap. It is a gap as you have described.

MS. HARVEY: And further on that same issue,
there was -- they would like to see clarity that elected tribal officials and any type of member can serve on that election board because there was confusion over that.

MS. DAUGHERTY: I think that --

MS. HARVEY: That any elected tribal official, appointed tribal official, or member of the tribe.

MS. IRON CLOUD: I think the way -- this is an umbrella members. So you wouldn't have a -- it wouldn't be an issue with an elected official. Right?

MS. HARVEY: Well, there was.

MS. IRON CLOUD: Because that is a member.

MR. KEEP: Yeah. If there's a question out there, we can further clarify it; that is, by tribal member, that's the only requirement. That doesn't disqualify anybody. There's no disqualification there. And in some instances, you might have some things that a tribal officer couldn't serve in a dual capacity, if you will. But in the absence of any provision in the tribal constitution that prohibits their officers from serving in other capacities, our regulations wouldn't impose that requirement. We can clarify that.

MS. IRON CLOUD: Absolutely.

MS. DAUGHERTY: Thank you. This is a real consultation process, because I guarantee you, even when we're all done with this and we all approve of a final
version and publish it, there's going to be issues that come up where you find another gap. That's just the nature of rulemaking and lawmaking. You think you have got everything covered, and I'm always -- I'm always not surprised at how something comes up, and we're like why didn't we think of that; it's so obvious. Thank you very much. Does anybody else have any other comments on that subject? Okay.

So the next change -- and this is -- you know, it affects Oklahoma more than anybody. It's something that's the same type of thing as I discussed earlier. We sort of knew that it was a component, but it was never expressly stated within the regulations, but there is a difference between how elections are conducted in Oklahoma because of the Oklahoma Indian Welfare Act, and how they're conducted everywhere else. So this new version of the regulation expressly describes that.

And it's really just a process that everywhere else in the world, you call the election, the election happens, it comes up typically to the regional director, and he checks to make sure the election was conducted properly, met the required percentages, and then approves the document. And Oklahoma is just out of order slightly. The document is approved, the election occurs, and so then when the regional director looks at things

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after the election has occurred, he's only checking if
the election was conducted properly because the document
is already approved. It's just an order thing. If Scott
wants to weigh in on why that is, I'll let him. Because
it's in the Oklahoma Indian Welfare Act.

MR. KEEP: I'm not sure it really matters to you
all because I think that in the 1988 amendments to
Section 16 of the IRA, it's clear that what has to happen
under the IRA is that the tribe has a right to vote on
the constitution before the secretary approves it. And
after the tribe has adopted the constitution, it's then
that the secretary does his approval or disapproves it if
he has advised the tribe ahead of time. But that's a
quirk as Dani pointed out.

We tried to research exactly why it is that
Oklahoma was done differently, and we don't really have a
good explanation other than it was interpreted by the
department when the Welfare Act was passed in 1937 to
require approval with the ratification by a vote of the
members afterward. We think it's more appropriate for
the secretary to defer approving or disproving a
constitution until after tribal membership has voted.
But the Oklahoma Indian Welfare Act suggests it should be
done otherwise in Oklahoma.

MS. DAUGHERTY: And that's one of those things we
think, oh, let's just clean it up. But we can't because it's a law. The regulations can't alter the law, and the Oklahoma Indian Welfare Act is a law, and the regulations have to follow it. So like Scott said, it's not something that Indian nations here need be concerned about. Maybe for some reason I'll eat those words, but it's just a component in the regulations that wasn't before.

And then the last major change -- and this, once again, is where we're seeking input. It really is a very unique situation type of change; it rarely happens. So it's an area where we don't see tons of traffic, and so it's just unique; it's a unique situation. This is a situation where a secretarial election is being conducted to adopt a governing document under a federal statute for the first time. So for any nation that already has a constitution, this would not be an issue. So it is really a unique circumstance.

And you can tell, Scott, where you most likely see this, is if there's a federal statute for the first time. Is that probably the most common?

MR. KEEP: I'm not sure there are very many at all right now. As I indicated in my opening remarks, in the '60s and early '70s, tribes that had not maybe paid much attention to organizing tribal governments began to
reorganize and adopt formal governing documents, where in
many instances -- particularly it was common out here in
California, a lot of groups had articles of association
more in the nature of a homeowners association -- they
started to adopt a formal constitution. So we've really
had -- I think if you looked at it from a historian's
point of view, you'll see there's been a major evolution
in Indian tribal governments from the late '60s to now.
In the last 40 years, tribes have become very
sophisticated in their governing documents and what they
want. And we don't have very many instances of tribes
that had no formal governing document or tradition.
There's very few.

MS. DAUGHERTY: So this really is a very unique
circumstance. But the prior regulations required at
least 60 percent of the tribal members or proposed tribal
members to petition to establish that document for the
first time. The new regulations propose to lower that
number to 20 percent. And I can guarantee you, even at
this table and away from this table, there was all sorts
of debate about what is the right percentage. You know,
is it higher than 60 percent, is it majority plus one, is
it 51 percent, is it 20 percent, is it 30 percent? We
don't know.

One of the reasons 20 percent was suggested was
to ensure that if members of the nation wanted to initiate that process, they would have a chance to and be able to meet the threshold because we do see some challenges with voter turnout and participation. So this is really narrow. We're seeking input, but we're seeking input for a really unique circumstance that probably won't happen to most of us. But we do value any input you might have on that.

MR. KEEP: I wanted to maybe elaborate a little bit more. Where we've seen it most commonly is in New Mexico with the Pueblos and New York where we have -- we don't -- a lot of those tribes do not have written governing documents but they have very strong traditional government. And a lot of tribes also have a custom of government by consensus so that they don't do voting at all.

So we're trying to accommodate the opportunity for tribes that haven't currently organized a formal written governing document to get one of those. It would be concerned that we don't want to be the vehicle for overthrowing, if you will, an established tribal government. So there are -- it's going to have a traditional government, so it's going to have relatively low application.

MS. HARVEY: So does this current threshold only
apply when they're doing the first-time document? What about amendments to existing documents? Is there a threshold?

MS. DAUGHERTY: There is. The fallback is 30 percent.

MS. IRON CLOUD: Or less.

MS. DAUGHERTY: Here's the deal. Let me correct that to be totally accurate. When you come forward to do an amendment, you do either a resolution from the tribe or a petition. The petition is 20 percent.

MS. HARVEY: And that's currently?

MS. DAUGHERTY: And that's currently in the proposal. So then the only reason it would be different from the 20 percent for a petition is if it's in the amendment section of the document that you're voting on that it's higher than that.

I misspoke when I said the 30 percent. The 30 percent would be the default percentage of the participation of registered voters, but when you're talking about the first instance when you're trying to -- say we're bringing forth an action to amend a document, it would be different. It would be the 20 percent for a petition or a resolution from the governing body. And the 20 percent of the petition would not -- it would be required unless the amendment section required a higher
petition percentage. I've seen it be 30 percent in some
of our nations.

MS. HARVEY: But it's 20 percent currently in the
regulation, and we're not changing that for the
amendments?

MS. DAUGHERTY: No, not for amendments. This is
only for the first time. That's why it's such an odd and
unique one.

And I'm not trying to cut you off. I just want
to make sure I get this in there for the record for you
guys. I'm not trying to cut off communication, but if
you walk away from here after we do any additional
questions you might have and you want to submit comments,
there are a number of ways you can do that. You all have
this handout here. You can go to www.regulations.gov.
You have Laurel Iron Cloud's email address,
laurel.ironcloud@bia.gov. You have Laurel's phone
number. She can provide you -- answer any questions you
have. And then also, within this federal register
publication, all the contact info is in there, including
the address for Laurel as well, and you can write a
document and submit it by mail. So you can do it on the
regulations.gov website, by email, by mail, any of those
mechanisms to submit any additional comments after today.
So I just wanted to get that in there. I'm not trying to
Because now, if you have any other questions about the changes we just talked about, the regulations as they're proposed, how they were before, any other thoughts or ideas or questions you have about the proposed regulations.

MS. HARVEY: Alison Harvey again. With our election last year, the government shut down prior to the election. And we almost weren't able to do it, and it was a very important election for our members. And so the question is, is there any procedure where a tribe can request a waiver from some of the timing deadlines? We didn't have an operating BIA post that qualified voters list at that time.

MS. DAUGHERTY: You know, in the present budget environment, maybe we do need to address this.

MS. HARVEY: Yeah. It was an emergency situation.

MS. DAUGHERTY: Last year they weren't conducting elections during the time period when we were in the government shutdown. And so then there became an unavailability of bureau staff to deal with some of the issues. So the question is: Do we need to have a section that addresses that possibility that maybe even says something to the effect that the time is told and
that the tribe might have some -- that the board has to sit down after that time period and, you know, maybe reinstitute the timelines or that the bureau would always retain staff and be able to continue the election process no matter what.

MS. HARVEY: They were prohibited from actually showing up to work.

MR. LONG: There was still essential staff at the office. In that situation, and I don't remember that specifically, there was a lot of conversation about that. And what we talked about then is what should have happened. And there isn't an allowance for the regional director to extend the time, and we should have just extended the time and posted it and just extended the election out by the 17 days or whatever it was that was delayed.

MS. HARVEY: So that possibility is still retained in this?

MS. DAUGHERTY: I know what we do in our region is endorse that and that's definitely something we'll consider as we're finishing these up. What has happened in our region is in a different scenario, and I described it earlier. Tribes have said can we extend our deadline, we want to extend the deadline and put it in writing to request it. And we allow that. And the only reason that
I've seen them do it is twice in my years since 2008, is because they wanted to do more voter education, they wanted more time to talk about the changes. So I don't see why that we couldn't put it in there for other reasons. And I don't know that we have to articulate exactly why.

But definitely, you're right, that is a concern; it's a real concern. I know there is some communication right now about that possibility when our continuing resolution expires next month. So maybe it's something we need to address, so we'll definitely consider your comments. What is your nation again, so we can monitor that.

MS. HARVEY: United Auburn Indian Community.

MS. DAUGHERTY: Okay. So what we need maybe is to get information from that time period too from the actual secretarial election to consider as we draft this and see what happened as that shutdown occurred precisely so we can see how to prevent problems like that.

MS. HARVEY: And the question was actually would it be possible to waive the deadline as opposed to extending it.

MS. DAUGHERTY: We're drafting the regulations right now in this consultation. Anything is possible.

MR. KEEP: There's a general provision in the
Consultation on Secretarial Elections, 11/20/2014

Code of Federal Regulations for Indian Affairs, and it authorizes the assistant secretary to weigh the regulations where it's in the best interest of the Indians.

The difficulty here is the time deadlines that we're talking about are ones that are statutory. And to the extent that we're running up against a statutory deadline, the assistant secretary doesn't have the option of waiving those. That's where the crunch comes, it seems to me.

But between the bureau and the tribe, it seems to me there's also an easy answer. And the easy answer is simply to ask the tribe to submit a new second request that would restart the time limit. There are a number of ways to work around it, it seems to me.

The difficulty for the assistant secretary is that somebody is going to say wait, you're in violation of the 1988 amendments of the IRA that require you as a matter of statute to hold the election within 90 days of receiving appropriate tribal requests. So once that is triggered, all right, the assistant secretary doesn't have an option no matter what the emergency is.

The way to get around it is to work with the tribe, to have the tribe submit to restart that 90-day period on mutually-agreeable terms. I think that that
certainly should be possible to do. But that's what the
problem is. If it's a deadline in our regulations, the
assistant secretary doesn't need to put a particular
provision in these regulations. He can use the general
waiver authority. But if it's a statutory timeframe,
he's got to work with the tribe to figure it out.

MS. HARVEY: So these deadlines like the posting
of the list -- those are statutory?

MR. KEEP: No. Those are all interim ones that
the bureau has set in order to meet its statutory
deadline. Really the only statutory deadlines are the
90 days for calling an election on amendment of a
constitution or 180 days on a new constitution and the
45 days for approval after the election. I think those
are the only three.

MS. IRON CLOUD: Yeah, you're right. The other
deadlines, the posting, those are procedural to make sure
that the final statutory deadline is met.

MS. DAUGHERTY: Thank you for your comments.
That's something we definitely have to think about.

Are there any other questions? Any comments,
anything?

MS. BROOKS: My name is Viola. And I know I
missed the first part of this, but about polling and not
necessarily requiring a polling place, what I have
witnessed with some other elections is that absentee
ballots not being counted because they don't come in by
the date. So is it the postmarked date? Or it's clear
in the regulations that it's, you know, received by close
of business? And then what happens if the election
committee selects to have the election on a Saturday or a
Sunday? And how would that impact the absentee ballots
being received through the mail?

MS. DAUGHERTY: If you look at the regulations,
just to be clear, absentee ballots are only required or
needed if there is a polling place. As the regulations
stand now, it would be primarily by mail unless the
amendment section of the document calls for polling
sites. So if you don't have the polling sites, you are
not going to have absentee ballots.

But if you do have that situation where you have
absentee ballots, those are part of the deadlines that
are set. It's the deadline to get absentee ballots out.
And it's expressed, and that's been, I guess, backed up.
But there are absentee ballots that won't be counted
because they come in too late. That's just a
requirement. People hang onto them and send them in
later sometimes. So that's why it's really important at
the agency level, and we train our agency staff that when
that stuff comes in, you time-stamp it so that everyone
knows when this was received. And if you know that the
regulation in there say about the weekends and holidays,
there's typically hard and fast extra challenges. But
there's a hard and fast deadline to receive absentee
ballots to vote and then also to receive registration.
Those deadlines are deadlines. And if we time-stamp all
of those things at the agency level, you know this is a
valid vote that came in and this is not.

MS. BROOKS: And then if they -- if the valid
vote -- if we got rid of the (inaudible) ballots and so
that would be considered a spoiled ballot if it was
received late?

MS. DAUGHERTY: No, because it's after the
deadline. Anything after the deadline would not be
counted.

MS. ELGIN: Lisa Elgin. I just had questions
about the process for -- say you want to amend -- or we
don't have an election ordinance that we need, so we need
a secretarial election done to change or make an
ordinance?

MS. DAUGHERTY: No. Secretarial elections are
federal elections that are only required under -- when
does the rule apply? Your own ordinances, your own
leadership elections -- those are all internal tribal
processes. I suppose -- I'm not going to totally
discount it because there might be a tribe out there that says hey, we want this ordinance to be approved by a secretarial election. I haven't seen it. And honestly, if a tribe proposed it, we might resist that because there's only so many limited resources. We can't be throwing elections for every little thing under the sun. But no, nations passing their own laws, nations having referendums on resolutions or new proposed laws, all of that is tribal election. I know that's confusing, but these elections are federal elections that are only for changing the documents.

MS. ELGIN: Amendments to the constitution.

MS. DAUGHERTY: Or a corporate charter.

MS. ELGIN: That would be a secretarial election process.

MS. DAUGHERTY: Yes. Federal election process. And the best place to look -- always your best place to look is in your organic documents, in your organizational documents. You'll see in there oh, there's an amendments section that talks about secretarial involvement, and that triggers the election requirements versus the other sections where they talk about passing ordinances. Typically it doesn't say anything about secretarial involvement. And even if it does say something about secretarial involvement, it might be just an approval of
the document, but not by an election; that would just be
the approval process.

MR. HOLSTEIN: Joseph Holstein. We're in the
process of removing the secretarial election from our
constitution. I was just wondering if there's any
particular document that we need in place that would be
approved.

MS. DAUGHERTY: Absolutely not. Other than what
you said the first time, which is that you have to have a
secretarial election to actually remove it. And then
after it passes, from that point forward, then you would
not need to utilize the federal, the secretarial election
process at all. But no, there's nothing special. It's
just like any other amendment. It's a very important
one, but it has to be conducted by this process, and it
would just be put forward as any other request.

MR. HOLSTEIN: And once the specific language is
sent to you guys, it's 90 days from that, when you guys
receive the specific language to the changes?

MS. DAUGHERTY: It will come in, but then there
will be the technical comment period where we will send
you a technical comment letter back on the document. And
here's -- this is the one slight variation on this.
Sometimes the language is very clean or it's just a small
change and there will be no technical comment letter, and

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the election will be authorized. Then that's when the
clock starts ticking, from the authorization. You have
90 days to do it from the date the regional director
authorizes the election to go forward.

MS. DIEGO: Leora Treppa Diego. Did I hear you
say previously that when you're going to do that, to
check through your constitution to make sure there isn't
anything that will change?

MS. DAUGHERTY: Absolutely. That's probably the
most common technical comment issue I've seen is changing
one small section but forgetting that other portions of
the constitution will touch on the language to change
too.

MS. BROOKS: One thing that's common for our
California constitution is something like approval of
current contacts, and that's usually under the powers of
the governing body. So we'll see that the tribe will
remove secretarial approval from their constitution, but
then secretarial approval will still remain in the other
parts of the constitution. Maybe approving the
membership role or something like that. So that would be
something that if you're going to remove us from this
section, you know, consider removing secretarial approval
from all those other sections.

MS. DAUGHERTY: And that really is -- I mean
that's a valid point. And we even do that in our region. If a tribe is going to have a secretarial election and they propose that, as long as you're going through all the effort to do this, you might want to -- now is the time to make other changes you may have been considering. So at some point too, there's competing concerns. If you change a lot of things, it makes voters nervous. So it's really just a balancing act. We really want this change, and that's what we're going to focus on or expand it out to do other things. It's the power of the nation. They don't have to come to the secretary to approve this ordinance or that attorney contract, as you articulated, to even maintain our governing documents. We can do that ourselves without secretarial involvement.

MR. KEEP: I'd like to add onto that. Removing the secretarial approval of the constitution and future amendments does not necessarily do away with the requirement for secretarial approval if it's required by some other provision of law. For example, the attorney contracts. There's other statutes that require secretarial approval for specific actions; attorney contracts, certain leases, or all leases. There's a variety of things. So you haven't gotten rid of the secretarial approval requirement for certain other actions where in those other actions secretarial approval
is required by other statutes. So just keep that in mind. You can clean it up, as Dani suggested. It really is helpful to make sure that you've gone through.

And years ago there used to be requirements for secretarial approval of any ordinance governing conduct of nonmembers on the tribe's land. Well, the department years ago recommended that whenever a constitution came in and that provision was still in there, if it wasn't one of the ones identified by the tribe for removal, we recommended taking that out. So it's that sort of thing that there may be some help that the bureau's technicians and the folks here can give you.

MS. DAUGHERTY: And unless congress changes it, you're stuck with us on liquor ordinances, so there's just some things that we will be involved with.

MR. LONG: There is instances, and especially nowadays with dis-enrollments and stuff like that. Tribal members still want secretarial approval for like imminent enrollment ordinance, allowed to leave and still not have that requirement in the (inaudible) constitution. So that requirement is still in the constitution and still not have the requirement for secretarial approval in the constitution.

MS. BROOKS: I'm a member of the Hoopa Valley tribe, and we run and conduct our own elections to amend
our constitution but still require secretarial approval. So that's just another option. And for whatever reason, that's just the way our tribe has selected to do it. We don't necessary do the secretarial election process, but we send everything into the bureau, you know, with the request for their approval.

MS. DAUGHERTY: And we do have a tribe in our region that's the same. And once again, that points back to the issue, and once again, you can consult one-on-one with your bureau staff on that issue. There's these little variations in the amendment language where a tribe has interpreted things differently or the language just expresses itself and says hey, this election is done a little bit differently. So it really is case-by-case nation-by-nation. We have to sit down and look at that amendment section. If you have a question, can we do this or can we do that. Well, you tell us what your interpretation of that language is in your amendment section, and let's look at that. They vary, and I can't stand up here and say that they're all the same. They're not; they're definitely not.

MR. HOLSTEIN: I just want to say thank you for answering that question. That brought up some valid points. For enrollment, I can see that still needs to be part of it.
MS. DAUGHERTY: Any other questions on anything?

MS. IRON CLOUD: Or recommendations on how we can make the proposed regs any better?

MS. DAUGHERTY: And if you can't think of anything here, it is not a quiz. We're not going to grade you. If you don't, and we really do -- we had three consultations, one in Atlanta and one earlier this week in Oklahoma. And I'll tell you, I'm very happy that this one -- there's definitely been some great points that brought up gaps or clarity issues that we had not previously considered. So this is, to me, exactly the kind of things that in a consultation process I love to see and be a part of. So I really thank you for your questions and input today.

And you know how to get a hold of Laurel. And if you have any questions even after we all walk away today, you're welcome to call me anytime. I just thank you for your time here and your attention.

MR. KEEP: Dani, I'd like to just address one more comment about the removal of the secretarial approval. I urge tribes to think very carefully about that. Not because the bureau wants to be involved in those, but when we've had a couple of instances where tribes withdrew or removed the requirement for secretarial approval from their constitutions. That also
removed the statutory requirement for minimum voter participation.

The IRA statute requires a minimum of 30 percent participation of what we now think of the eligible voters which are the registered ones. And when you take the secretarial approval out, those minimum requirements are also gone. And if the tribe isn't very careful, some tribes we've had experience with that without that statutory minimum, they have amended their constitutions with very, very small voter participation. And that has resulted in really substantial instability in the tribal government. Where you can say well, 30 percent got out of the majority, so that's really 16 percent. That's really not overwhelming participation. When you take that out, we've had some participation levels as low as the single digits.

And that just is -- the tribe, if they do that, they need to make sure they also ramp up their efforts to get voter participation because it's so important to have that participation reflected. So it puts more of a burden on the tribe, and they need to realize that that burden comes with that territory. So think very carefully about it.

MS. IRON CLOUD: Viola, you look like you had a final question or a question.
MS. BROOKS: Mine is more procedural. So let's say Upper Lake, for example. And say they want to remove secretarial approval from their constitution in three separate instances, whatever the case may be. So then in that instance, they would be submitting to the bureau three separate amendments, and each amendment would have to be voted on separately. Do you, you know, want to take this -- remove secretarial approval over this provision Amendment A, this provision Amendment B, and this provision Amendment C, which is actually what we had to do with the United Auburn Indian Community. They had a series of amendments, and those amendments are incorporated into the back of their constitution versus having one vote where it's like do you accept these changes, yes or no.

MS. DAUGHERTY: They would be separate amendments. There are occasion where a tribe will say we're amending the entire document at once, and there's a determination from the nation that they would do it that way or the other way. I think a lot of nations like to break it up into the separate amendments. At some point, you know, when you're making so many amendments, you're really revising the whole document, so there's no distinct line as to what that is. But some nations like to keep those separate just in case two would pass and

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one wouldn't, but people would vote against all of them because they don't like the one. So nations typically like to keep the amendments separate just to maximize the opportunity that some change will occur versus none.

So that's really a tribal decision as the regulations are made. There's no critical cut off of oh, once you get to 18 amendments or 10 amendments that you have to have a vote. That's certainly an area where you comment if you want it to be that strict. But we usually leave that up to the nation whether they're going to do that as an entire document saying we're voting to replace the entire document or just this one. Every nation I have worked with -- and Scott has a lot more experience than I do -- has done it in separate amendments to maximize the chance that some of the constitution will change.

MR. KEEP: Yeah. I just want to add to what Dani said. One of the other things that everybody needs to think about when they want to do multiple amendments, which is good -- you can't say Part 1 we want to have either -- you can't give three alternatives. All right? Keep in mind that when you break up the amendments, you have to have -- you can only keep the existing document or the new document. You can't say we want either the existing document or Alternative A or Alternative B.
Because that then gives the voters three options. You might end up with no particular amendment getting a majority.

So the amendment or the change has to be by a majority vote. So you can't give the voters an alternative. The tribes have to explore what those alternatives are ahead of time through tribal education meetings or whatever so that what goes on the ballot, there are only two alternatives; keep the existing provision or the amendment.

MS. DAUGHERTY: And that's not unchanged from the prior regulations.

MS. IRON CLOUD: Yeah. If you do two alternatives, it could be argued that they're conflicting, and this does not allow for conflicting amendments. So one amendment has to be voted up or down at a given time, not alternatives or conflicting.

MS. DAUGHERTY: Yeah. Scott called it. It's basically do we want to make the change or do we want the document to stay the same. That's really the choices that are reflected.

MR. KEEP: And just one last comment, if you will. One of the things that I think has been difficult for tribes is we've had tribal leaders who have wanted to go with an entirely new document, and the bureau has
authorized those. And then groups within the tribes have disagreed and challenged it because it presented the voters with an all-or-nothing. All right? And that's very difficult. It needs to be -- the bureau needs to work with the tribe to make sure that there's an adequate voter education effort ahead of time.

Where we've had trouble and had litigation is where we haven't had that tribal chairman, and his council has come in and said we want X, and it's a total change. And then all of a sudden, there's the traditional faction within the tribe that says no, no, we want to keep the old way because we want X.

And if we can't demonstrate that there was an adequate opportunity to educate the voters and the rest of it, we've had to go back and redo the election. And in a couple of cases, we have had to appoint a special commission that spent nearly a year traveling through the territory conducting voter education. So the more the tribe can do on that sort of thing ahead of time, the better off.

And as Dani said, a lot of tribes like to do it with separate different amendments for that very purpose. It's easier because one particular revision which is controversial, they can exclude that. So long as all the ones that are adopted work together, that's the key.
MS. DAUGHERTY: Yeah. Definitely there are some -- you know, this is, I think, just the value of doing the voter education. Because that's -- it increases the likelihood that the amendments will have a chance of passing. Because I really do get the impression from talking to people in the community, talking about this process. If people don't understand something, they will just automatically vote no, and then all of us have engaged in all this work and effort to bring this forward and it's not going to pass.

One of the comments in the previous round of consultations was one of the tribes suggested that in the regulations that we required the tribal education. And ultimately we just thought that's just so paternalistic. It's up to the nation to decide how much voter education that they want to do. But I always, just as a matter of course, just encourage as much of it as possible. It would be a shame for us to do all this work together and have something not pass just because there was not enough effort for people to understand what they were voting on.

MS. DIEGO: Leora Treppa Diego. Say we're successful in removing the secretarial election part of the process. Are there any statutes or regulations that require us to report further changes to the constitution?

MS. DAUGHERTY: There really aren't. But one of
the issues will be, obviously, as we interact going forward, there are times, for example -- let's say a land lease or something to that effect, where you're going to want the bureau to take action on something. We are going to ask, can we see the most recent copy of the constitution because part of that process is was this request put forth in a valid resolution. Well, we don't know, so we have to see in your documents what is a valid resolution.

So even though we're not involved, you have to share that document with us. You're going to want to do it as a matter of course. All those other mechanisms where tribes pass resolutions to take action, if you want us to take action based on those actions that you have taken -- or another example, sometimes tribes change their plans for the casino distributions. When we submit those up to the Office of Indian Gaming, one of the questions asked is was this request passed pursuant to a valid resolution. And we can't answer that question until we see the resolution and the constitution, what the requirement is for a valid resolution.

So even though there's no requirement, if you want certain actions and you want us involved in those, then you'll give it to us at that point anyway. There's no requirement. We actually -- we encourage that you
don't have to show us all of your resolutions; you just have to show us the ones you want us to take action on. But once you want us to take an action if you're requesting something from us, we have to be assured that that's a valid action of the nation to be able to follow our regulations, so you're going to have to provide the constitution to us at some point if you want something form us. But otherwise, no.

MS. ELGIN: Lisa Elgin. Just the one part I have a question on is the amendments to the constitution. We did have like eight of them brought to us all at once, and that process happened where it was all or none. And the way we presented it to the council was we brought back to us as a voting membership was, you know, one through eight, yes or no. It didn't present itself that way. So I'm wondering how do we now reverse some of those amendments? Do we make an amendment to that amendment? Or do we do a new amendment?

And I think the whole part in the process for membership going to vote, there was a big mixup about how voters have to register, and they thought they were already entitled because you're members, why should you have to register to go through the voting process, so a lot of people didn't get that. And I get that now. It's the education part of it. But a lot of members and a lot
of elders didn't get that; they said I'm a member, I'm going to vote, I don't need to turn anything in. And that's what happened at the polling that day. And a lot of members were rejected and turned away, and there was a whole discrepancy about how the information went out, had wrong address, came back, and they redid them. So that whole process was just a big kind of a sham for all of us because you want some of the amendments to pass, but some of them you don't, so all or nothing didn't work for us, and we had a low voter turnout. But it turned out, you know, maybe an eighth of our tribe voting on eight amendments that most of us didn't want.

MS. DAUGHERTY: Well, as to your first point -- I'll tackle both of those questions. The first, you're right. You can immediately turn around and say look, this passed, it's in place, and a lot of people don't agree with it, let's take another look at it, let's do some education. And we actually have seen things turn around pretty quickly.

We had a tribe that lowered its blood quantum requirement down to an eighth from a quarter. And less than a year later, they said we want to have another election to bump it back up to a quarter. And I thought -- we had registered people for a year, and people went in in droves, and I thought there is no way
they're going to raise that back again. And they did; they successfully did. I was shocked. So anytime there's amendments in place that it passes and is incorporated into the constitution or the document and there is still some disagreement in the community, let's take another look at that, you're perfectly welcome to propose another process. In your case, was the election conducted pursuant to a petition or to the tribal governing body bringing forth a resolution?

MS. ELGIN: Tribal governing body.

MS. DAUGHERTY: Okay. So then at the point where they passed that resolution and there already was some confusion about all or nothing, you're right, that's really getting back to the voter education process and definitely making sure your counsel representatives know hey, we want this to be different. That almost is like a situation like we described earlier where if enough people came to the council to express that, they might have withdrawn that request before the process was too far down the road.

But at any point, that's the best thing about these processes, is these governing documents are living and breathing documents. So if there's things you disagree with, tackle it again. Yeah, you're right. The more involved that process is, the more community
involvement and the more voter education, the more likely you are to get it done in a way that most people agree with.

As far as the registration, that has always been a challenge. But from our perspective as the federal government conducting these elections -- and I can't remember your name, sir. What is your first name?

MR. HOLSTEIN: Joseph.

MS. DAUGHERTY: Okay. I think Joseph hit it when he talked about we want to remove the secretary from this process. Because then you can do the election as you seek to do it yourself as a nation. But until that point, if it's still in there and we're conducting it, we have to have a way of measuring that the proper people had a chance to vote. And that's why we do the registration process, because it's a federal election. We have to find a way to calculate that 30 percent that were required to calculate as far as okay, have the membership -- and then you have a smaller group that registered, and then 30 percent of those people had to participate in the election process, and then whatever the majority of them said is whether we decide if a change has occurred or not. We have to have a way to measure that, and as the government, the way to do that is through the registration process. I know it
frustrates a lot of tribal nations. From our perspective, it can't, because we have to have a way to verify to everybody that that election was conducted credibly.

We are hoping that that change to allow it to occur all by mail-out instead of by ballot or polling sites where it's not required by the amendments will increase that voter participation so that people don't have to worry about showing up. We certainly welcome your comments on that. That just gets you right back to the main point, which is you can remove us from this process and we'll help you do it. I personally believe that's a nation acting like a nation, and we would love to help you with that process to remove us so that you can conduct your amendments however you seek to do it.

MS. BROOKS: Also it's important to do a lot of work ahead of time working with the secretarial election committee working with, you know, the tribal members. Because you know your members the best. So understanding what's the intent too, because it's usually easier to do the all-or-nothing, do you accept this or do you reject this, yes or no. You know, so some tribes feel like putting everything together to all eight amendments on for one ballot would be, you know, easier or more likely to have success than voting on each separate amendment.
So that's something that, you know, would be a decision that the tribe and the election committee would have to decide. You know, and then that's how they format the election and what type of request and stuff like that.

So that's something that, you know, I would recommend you consult with the agency, you know, to seek technical assistance from them and then, like I said, working with your tribe to decide what you think is the best way to present this to the memberships.

MS. DAUGHERTY: And frankly, when we get the tribal request, you'll see that right in the request. You get the exact language to be voted on. They can show you here's how the whole document is written, and here's how we want to see the whole document written. That's the all-or-nothing request from the tribe. You would know that immediately once we receive the request. Or are we receiving eight amendments? This is how the language reads now in this spot; this is how we want it to read in this spot. You'll know right when you get the tribal request and you see the request that's attached to the resolution whether they're proposing it as an all-or-nothing deal and hopefully take action pretty quickly right there to say wait a minute, we didn't think this was all-or-nothing, we need to maybe change that request. If it's in the petition form, you'll know right
there when you're signing the petition. Are they circulating a petition with an entire document? Are they circulating it in a pile? Then you'll know.

MS. IRON CLOUD: Any further questions or comments?

Harley, do you have anything you'd like to say?

Okay. Thank you all for coming. I appreciate your time and your input. Again, you've been inundated with our contact information as to how to submit written comments. Just a reminder that the commentary period ends on December 17th. So please, we do welcome that input.

Once we receive all the comments and we receive the transcripts back from all of our consultation sessions, the department will undergo a review process of all of that information and make any relevant considerations and have that relevant discussion to those issues. Then the document will work its way through departmental approval. So those are the next steps.

I can't promise anything time-wise. I know a lot of people ask when will these be finalized. I can't promise anything. But our regulatory affairs office said that on average, at least a couple of months for the — after the December 17th commentary cutoff, then a couple months for consideration of any other changes and
clarification.

MS. BROOKS: If anyone wants to take copies of this material back to their tribe, there are plenty of copies out front, so feel free to grab them on your way out.

MS. IRON CLOUD: Again, thank you. And this concludes this consultation session.

(The hearing concluded at 10:20 a.m.)

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I, PATRICIA R. CHAPIN, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the proceedings.

I further certify I am neither financially interested in the action nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: November 30, 2014

PATRICIA R. CHAPIN, CSR No. 13493

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